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ORIGINAL

FIRST CIRCUIT COURT
STATE OF HAWAII
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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

LOUIS M. KEALOHA, KATHERINE E. KEALOHA, and KRISTINA KEALOHA, a minor child, by her next friend, KATHERINE E. KEALOHA, Plaintiffs, vs. CHARLES W. TOTTO, individually and as Executive Director and Legal Counsel of the Honolulu Ethics Commission; LETHA A.S. DECAIRES, individually and as investigator for the Honolulu Ethics Commission; HONOLULU ETHICS COMMISSION; and THE CITY AND COUNTY OF HONOLULU, Defendants.	CIVIL NO. 16-1-1166-6 GWBC (Non-Motor Vehicle Tort) DEFENDANT LETHA A.S. DECAIRES, individually and as investigator for the Honolulu Ethics Commission's **MOTION (A) FOR MORE DEFINITE STATEMENT, (B) TO STRIKE, AND (C) TO JOIN DEFENDANTS HONOLULU ETHICS COMMISSION AND CITY AND COUNTY OF HONOLULU'S MOTION FOR MORE DEFINITE STATEMENT AND MOTION TO STRIKE**; MEMORANDUM IN SUPPORT OF MOTION; DECLARATION OF COUNSEL; EXHIBITS "A" – "B"; NOTICE OF HEARING; CERTIFICATE OF SERVICE Hearing Date: November 9, 2016 Time: 3:00 pm. Judge: Gary W.B. Chang Trial Date: None

2016 SEP 20 PM 3:06

FIRST JUDICIAL CIRCUIT
STATE OF HAWAII
14TH DIVISION

DEFENDANT LETHA A.S. DECAIRES, individually and as investigator for the Honolulu Ethics Commission's MOTION (A) FOR MORE DEFINITE STATEMENT, (B) TO STRIKE, AND (C) TO JOIN DEFENDANTS HONOLULU ETHICS COMMISSION AND CITY AND COUNTY OF HONOLULU'S MOTION FOR MORE DEFINITE STATEMENT AND MOTION TO STRIKE

Defendant LETHA A.S. DECAIRES, individually and as investigator for the Honolulu Ethics Commission ("**DeCaires**"), by and through her attorneys, Kobayashi Sugita & Goda, LLP, hereby moves (a) for a more definite statement, (b) to strike the Verified Complaint for Damages, Declaratory and Injunctive Relief filed on June 17, 2016 ("**Complaint**"), and (c) to join Defendants Honolulu Ethics Commission and City and County of Honolulu's Motion for More Definite Statement and Motion to Strike ("**City and County's Motion**").

Pursuant to Rule 12(e) of the Hawaii Rules of Civil Procedure ("**HRCP**"), DeCaires seeks a more definite statement because the Complaint does not clearly identify claims against DeCaires, and is so vague and ambiguous as to preclude DeCaires from formulating any reasonable response. By failing to provide such information, the Complaint does not comply with HRCP Rule 8(a)'s requirement that a complaint contain "a short and plain statement of the claim showing that the pleader is entitled to relief." DeCaires therefore requests an order directing Plaintiffs LOUIS M. KEALOHA, KATHERINE E. KEALOHA, and KRISTINA KEALOHA, a minor child, by her next friend, KATHERINE E. KEALOHA (collectively "**Plaintiffs**") to provide a more definitive statement identifying the specific claims against each named Defendant, including allegations regarding the elements of those claims, and such further information as required by the Court.

Pursuant to HRCP Rule 12(f), DeCaires also moves to strike Plaintiffs' redundant, immaterial, impertinent, and scandalous matters from the Complaint, and to strike the approximately thousand pages of exhibits attached thereto.

Finally, pursuant to Rule 7.2 of the Rules of the Circuit Courts of the State of Hawaii, and HRCP Rules 6(d) and 7, DeCaires moves to join the City and County's Motion, and respectfully requests that the hearing on this Motion be consolidated with the City and County's Motion, which is set for October 4, 2016 at 3:00 p.m. Because DeCaires joins in and incorporates by reference the arguments in the Memorandum in Support of the City and County's Motion, it would be in the interest of judicial efficiency and economy to hear the motions at the same time.

This Motion is supported by the accompanying Memorandum in Support of Motion, Declaration and Exhibits attached hereto, such further evidence and argument that may be presented to the Court, and the entire record and files of this case.

DATED: Honolulu, Hawaii, September 20, 2016.

DAVID M. LOUIE
NICHOLAS R. MONLUX

Attorneys for Defendant
LETHA A.S. DECAIRES,
individually and as investigator
for the Honolulu Ethics Commission

1480075-5

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

LOUIS M. KEALOHA, KATHERINE E. KEALOHA, and KRISTINA KEALOHA, a minor child, by her next friend, KATHERINE E. KEALOHA, Plaintiffs, vs. CHARLES W. TOTTO, individually and as Executive Director and Legal Counsel of the Honolulu Ethics Commission; LETHA A.S. DECAIRES, individually and as investigator for the Honolulu Ethics Commission; HONOLULU ETHICS COMMISSION; and THE CITY AND COUNTY OF HONOLULU, Defendants.	CIVIL NO. 16-1-1166-6 GWBC (Non-Motor Vehicle Tort) MEMORANDUM IN SUPPORT OF MOTION

MEMORANDUM IN SUPPORT OF MOTION

I. INTRODUCTION

Rule 8(a)(1) of the Hawaii Rules of Civil Procedure ("**HRCP**") requires a "short and plain statement of the claim showing that the pleader is entitled to relief." The purpose of a complaint under Rule 8 is to give the defendants fair notice of the factual basis of the claims and of the basis for the court's jurisdiction. See Tokuhisa v. Cutter Mgmt. Co., 122 Hawaii 181, 192, 223 P.3d 246, 257 (App. 2009); In re Genesys Data Techs., Inc. v. Genesys Pac. Techs., Inc., 95 Hawaii 33, 41, 18 P.3d 895, 903 (2001) ("Hawaii's rules of notice pleading require that a complaint set forth a short and plain statement of the claim that provides defendant with fair notice of what the plaintiff's claim is and the grounds upon which the claim rests.").

Although Rule 8 is not violated per se by length, verbosity, or ambiguity, a number of cases are "quick to point out that excessive page length, verbosity, or ambiguity can rise to the extent necessary to deny the defendant fair notice of the grounds upon which the claim rests." In re Mortgages Ltd., No. 2:08-BK-07465-RJH, 2013 WL 1336830, at *12 (Bankr. D. Ariz. Mar. 29, 2013) (collecting cases); see also Canalez v. Bob's Appliance Serv. Ctr., Inc., 89 Hawaii 292, 306, 972 P.2d 295, 309 (1999) ("Where a Hawai`i rule of civil procedure is identical to the federal rule, 'the interpretation of this rule by federal courts is highly persuasive.'" (quoting Shaw v. N. Am. Title Co., 76 Hawaii 323, 326, 879 P.2d 1291, 1294 (1994)); compare Haw. R. Civ. P. 8(a)(1) (a pleading "shall contain . . . a short and plain statement of the claim showing that the pleader is entitled to relief"), with Fed. R. Civ. P. 8(a)(2) (a pleading "must contain . . . a short and plain statement of the claim showing that the pleader is entitled to relief"). "Something labeled a complaint but written more as a press release, prolix in evidentiary detail, yet without simplicity, conciseness and clarity as to whom plaintiffs are suing for what wrongs, **fails to perform the essential functions of a complaint**." McHenry v. Renne, 84 F.3d 1172, 1177-80 (9th Cir. 1996) (emphasis added).

In this case, Plaintiffs LOUIS M. KEALOHA, KATHERINE E. KEALOHA, and KRISTINA KEALOHA, a minor child, by her next friend, KATHERINE E. KEALOHA (collectively "**Plaintiffs**")' Complaint for Damages, Declaratory and Injunctive Relief, filed on June 17, 2016 ("**Complaint**"), attached hereto (without exhibits) as Exhibit "A," fails to "perform the essential functions of a complaint."

The 44-page Complaint, which contains 132 numbered paragraphs and approximately a thousand pages of exhibits is meandering, repetitive, vague and ambiguous, and does not clearly identify the claims against Defendant LETHA A.S. DECAIRES, individually and as investigator for the Honolulu Ethics Commission, ("**DeCaires**") showing that any pleader is entitled to relief. See Schmidt v. Herrmann, 614 F.2d 1221, 1223-24 (9th Cir. 1980) (not "short and plain" when plaintiff's complaint was 30 pages without distinguishing cause of action, and was "confusing, distracting, ambiguous, and unintelligible" in presentation). For example, Plaintiffs allege that "false statements made by defendants were defamatory and defamatory per se." Complaint ¶ 128. Yet, almost all of the allegations in the Complaint regarding "false" and/or "defamatory" statements made by DeCaires are conclusory, at best, and do not identify the alleged "false" and/or "defamatory" statement(s) made. See Complaint ¶¶ 38, 50(e), 80, 84(a), 99(a), 99(c), 99(d), 99(e), 101(a), 101(e), 126.

The first element of a claim for defamation is a "false **and** defamatory statement concerning another . . . ." Gold v. Harrison, 88 Hawaii 94, 100, 962 P.2d 353, 359 (1998) (emphasis added) (quoting Dunlea v. Dappen, 83 Hawaii 28, 36, 924 P.2d 196, 204 (1996)). Without knowing what the alleged false and defamatory statements are, DeCaires cannot adequately defend herself against these claims. See, e.g., Mahoe v. Operating Eng'rs Local Union No. 3 of the Int'l Union of Operating Eng'rs, AFL-CIO, No. CIV. 13-00186 HG-BMK, 2013 WL 5447261, at *8 (D. Haw. Sept. 27, 2013) (dismissing defamation claim under Hawaii law, in part, because "[t]he Complaint lacks information about the actual content of any allegedly defamatory statements. There is no identification of an author of any such statements. There is no information about when any defamatory statements were made").

In addition, Plaintiffs make a series of conclusory allegations against "Defendants" in paragraphs 119-132.[1] Because Plaintiffs do not, identify any specific alleged conduct giving rise to these claims, DeCaires cannot formulate an adequate response via an answer or motion to

[1] Following paragraph 129 are incorrectly numbered paragraphs 108, 109, and 110. DeCaires refers to these paragraphs as paragraphs 130, 131, and 132, respectively.

dismiss. Rather, she is forced to speculate as to which allegations form the basis for Plaintiffs' conclusory claims against her. Such forced speculation violates HRCP Rule 8. See Vierra-Pupunu v. OneWest Bank, No. CV. 10-00313 DAE KSC, 2011 WL 1304858, at *11 (D. Haw. Apr. 4, 2011) ("Although FRCP Rule 8 requires only that a complaint include a 'short and plain statement of the claim showing that the pleader is entitled to relief,' the complaint must sufficiently put Defendants on fair notice of the claim asserted and the ground upon which it rests. **Defendants, nor the Court, are required to speculate as to which provisions Plaintiff is suing under or how Defendants violated such provisions**." (emphasis added)); see also Garcia v. IndyMac Bank, F.S.B., No. 2:12-CV-02997-ODW, 2012 WL 1745782, at *1 (C.D. Cal. May 16, 2012) ("Plaintiff must plead a short and plain statement of the elements of her claim, 'identifying the transaction or occurrence giving rise to the claim and the elements of a prima facie case.'" (quoting Bautista v. Los Angeles County, 216 F.3d 837, 840 (9th Cir. 2000)).

Accordingly, the Court should grant this Motion and order Plaintiffs to provide a more definite statement identifying the specific claims against each named Defendant, including allegations regarding the elements of those claims, and such further information the Court requires. See McHenry, 84 F.3d at 1179-80 ("[T]he judge may in his discretion, in response to a motion for a more definite statement under Federal Rule of Civil Procedure 12(e), require such detail as may be appropriate in the particular case, and may dismiss the complaint if his order is violated. Prolix, confusing complaints such as the ones plaintiffs filed in this case impose unfair burdens on litigants and judges.").

DeCaires also requests an order striking Plaintiffs' redundant, immaterial, impertinent, and scandalous matters from the Complaint, and the approximately thousand pages of exhibits attached thereto. Plaintiffs have improperly appended evidentiary materials to their Complaint that are unnecessary, lengthy, and prejudicial to Defendants in this case. See 5C Charles Alan Wright, et al., Federal Practice and Procedure § 1383 (3d ed.) Westlaw (database updated Apr. 2016) ("[S]ince pleading evidence is not favored . . . because it violates the principle of simplicity of statement, evidentiary allegations may be stricken, particularly if the excessive narrative is lengthy, or if the details are inadmissible or prejudicial.").

The allegations in the Complaint regarding third parties are immaterial, impertinent, and scandalous because the third-parties mentioned are not named defendants. Further, the allegations involving the third-parties do not appear to be germane to any claim in the Complaint (to the extent a claim can be deciphered). See Complaint ¶¶ 20-36 and 55-63. These paragraphs should be stricken so as to avoid creating "unnecessary notoriety" and to "protect the person who is the subject of the allegations." Wright, et al., supra, § 138.

Further, Defendants should not have to sift through thousands of pages of exhibits to determine what, exactly, they are defending themselves against. Dockens v. Dekalb Cty. Sch. Sys., No. 1:07-CV-1345-CAP, 2008 WL 9396388, at *4 (N.D. Ga. Apr. 25, 2008) ("No defendant should be required to sift through voluminous and haphazard exhibits attached to a complaint simply to determine what, exactly, it is defending itself against; **the complaint itself should be sufficient**." (emphasis added)); U.S. ex rel. Garst v. Lockheed-Martin Corp., 328 F.3d 374, 378 (7th Cir. 2003) ("Rule 8(a) requires parties to make their pleadings straightforward, so that judges and adverse parties need not try to fish a gold coin from a bucket of mud. . . . [J]udges have better things to do, and the substantial subsidy of litigation (court costs do not begin to cover the expense of the judiciary) should be targeted on those litigants who take the preliminary steps to assemble a comprehensible claim."). Therefore, it is also appropriate for the Court to strike exhibits attached to the Complaint.

II. ARGUMENT

Although DeCaires' is seeking the same relief set forth in Defendant Honolulu Ethics Commission and City and County of Honolulu's Motion for More Definite Statement ("**City Defendants' Motion**"), the undersigned believes it was necessary to bring a separate motion to fulfill DeCaires' obligation under the HRCP to respond to the Complaint. Nevertheless, to avoid drafting a completely duplicative motion that would waste the Court's time, DeCaires hereby adopts, joins in, and incorporates by reference the arguments on pages 3-18 of the Memorandum in Support of the City Defendants' Motion, which is attached hereto as Exhibit "B."

III. CONCLUSION

For the reasons set forth above and in the Memorandum in Support of the City Defendants' Motion, DeCaires respectfully requests that the Court grant this Motion.

DATED: Honolulu, Hawaii, September 20, 2016.

DAVID M. LOUIE
NICHOLAS R. MONLUX

Attorneys for Defendant
LETHA A.S. DECAIRES,
individually and as investigator
for the Honolulu Ethics Commission

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

LOUIS M. KEALOHA, KATHERINE E. KEALOHA, and KRISTINA KEALOHA, a minor child, by her next friend, KATHERINE E. KEALOHA, Plaintiffs, vs. CHARLES W. TOTTO, individually and as Executive Director and Legal Counsel of the Honolulu Ethics Commission; LETHA A.S. DECAIRES, individually and as investigator for the Honolulu Ethics Commission; HONOLULU ETHICS COMMISSION; and THE CITY AND COUNTY OF HONOLULU, Defendants.	CIVIL NO. 16-1-1166-6 GWBC (Non-Motor Vehicle Tort) DECLARATION OF COUNSEL

DECLARATION OF COUNSEL

I, NICHOLAS R. MONLUX, declare the following to be true and correct based upon my personal knowledge:

1. I am an attorney at the law firm of Kobayashi Sugita & Goda, LLP, counsel to LETHA A.S. DECAIRES, individually and as investigator for the Honolulu Ethics Commission ("**DeCaires**") in the above-entitled matter.

2. I make this declaration pursuant to Rule 7(g) of the Rules of the Circuit Court, State of Hawaii, and in support of DeCaires' Motion (A) For More Definite Statement, (B) To Strike, and (C) To Join DEFENDANTS HONOLULU ETHICS COMMISSION AND CITY

AND COUNTY OF HONOLULU's Motion for More Definite Statement and Motion to Strike, filed on July 11, 2016 ("**DeCaires' Motion**").

3. Attached to DeCaires' Motion as Exhibit "A" is a true and correct copy of Plaintiffs LOUIS M. KEALOHA, KATHERINE E. KEALOHA, and KRISTINA KEALOHA, a minor child, by her next friend, KATHERINE E. KEALOHA ("**Plaintiffs**")s' Complaint for Damages, Declaratory and Injunctive Relief, filed on June 17, 2016 ("**Complaint**"). Due to size of the exhibits attached to Plaintiffs' Complaint—approximately 1,000 pages—the Complaint attached to DeCaires' Motion does not include exhibits. A copy of the Complaint is kept and maintained in my firm's files in the ordinary course of its business.

4. Attached to DeCaires' Motion as Exhibit "B" is a true and correct copy of Defendant Honolulu Ethics Commission and City and County of Honolulu's Motion for More Definite Statement and Motion to Strike, filed on July 11, 2016 ("**City & County's Motion**"). A copy of the City & County's Motion is kept and maintained in my firm's files in the ordinary course of its business.

I, NICHOLAS R. MONLUX, declare upon penalty of law that the foregoing is true and correct.

DATED: Honolulu, Hawai'i, September 19, 2016

NICHOLAS R. MONLUX

1ST CIRCUIT COURT
STATE OF HAWAII
FILED

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by her next friend,
KATHERINE E. KEALOHA

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HONOLULU
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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

LOUIS M. KEALOHA, KATHERINE E. KEALOHA, and KRISTINA KEALOHA, a minor child, by her next friend, KATHERINE E. KEALOHA, Plaintiffs, vs. CHARLES W. TOTTO, individually and as Executive Director and Legal Counsel of the Honolulu Ethics Commission; LETHA A.S. DECAIRES, individually and as investigator for the Honolulu Ethics Commission; HONOLULU ETHICS COMMISSION; and THE CITY AND COUNTY OF HONOLULU, Defendants.	CIVIL NO. 16-1-1166-6 GWBC (Non-Motor Vehicle Tort) VERIFIED COMPLAINT FOR DAMAGES, DECLARATORY AND INJUNCTIVE RELIEF; EXHIBITS 1-76; DEMAND FOR JURY TRIAL; SUMMONS

I do hereby certify that this is a full, true, and correct copy of the original on file in this office.

Clerk, Circuit Court, First Circuit

EXHIBIT "A"

VERIFIED COMPLAINT FOR DAMAGES,
DECLARATORY AND INJUNCTIVE RELIEF

Comes now plaintiffs above named, by and through their counsel, and for complaint against the defendants above-named, allege and aver as follows:

THE PARTIES.

1. Plaintiffs LOUIS M. KEALOHA, KATHERINE E. KEALOHA, and KRISTINA KEALOHA are, and at relevant times were, residents of the State of Hawaii. KRISTINA KEALOHA, a minor child, brings this action by and through her next friend, KATHERINE E. KEALOHA.

2. Defendant LETHA A.S. DECAIRES ("DeCaires") is, and at all relevant times was, a resident of the State of Hawaii. Her actions which are the subject of the allegations herein took place in the State of Hawaii. All actions and failures to act alleged herein on her part were performed and/or not performed while acting as an investigator for the Honolulu Ethics Commission.

3. Defendant CHARLES W. TOTTO ("Totto") is, and at all relevant times was, a resident of the State of Hawaii. His actions which are the subject of the allegations herein took place in the State of Hawaii. All actions and failures to act alleged herein on his part were performed and/or not performed while acting as the Executive Director and Chief Legal Counsel of the Honolulu Ethics Commission.

4. Defendant THE HONOLULU ETHICS COMMISSION ("Ethics Commission") is an agency of the City and County of Honolulu, State of Hawaii.

5. The City and County of Honolulu is a municipal entity doing business in the State of Hawaii.

OVERVIEW—CORRUPTION OF UNCHECKED POWER

6. Totto and DeCaires have, since 2013 conducted a series of unfounded, vindictive, unsubstantiated and illegal investigations of plaintiffs, at great cost to the taxpayors and to the enrichment of at least DeCaires. Their actions caused, not only significant financial loss to the taxpayers, but an immeasurable effect on the morale of the City employees and community members who have witnessed such grotesque abuses of power and process. Exhibit 3.

7. Defendants Totto and DeCaires have, by their improper and vindictive actions, damaged the operations of the Honolulu Prosecutor's Office and the Honolulu Police Department, the two entities of the City charged with enforcement of the laws of the State of Hawaii and the City and County of Honolulu and protecting their citizens. Making incessant demands upon these departments for documents and information of questionable importance or even relevance, they have repeatedly imposed unnecessary and frivolous burdens upon these departments in their futile quest to manufacture a case against plaintiffs.

8. Totto and DeCaires, charged with enforcing the ethical Standards of Conduct applicable to all City and County employees, should be held to the highest standards of ethical conduct and leadership, so that the public and County employees will be able to have trust and confidence in the integrity of those in charge of policing the ethical practices of the County's government agencies.

9. With callous disregard for the lives and reputations of others, and the demoralizing effect their vicious conduct has had on a number of County agencies and employees, both Totto and DeCaires have to date committed serious ethical, moral and

professional violations with complete impunity. These individuals have caused irreparable harm to the Honolulu Police Department, the Office of the Prosecuting Attorney, the hardworking men and women of the City and County of Honolulu, including the named plaintiffs in this matter.

10. The chaos and dissention caused by Totto and DeCaires have negatively affected two of the State of Hawaii's most significant Departments tasked with assuring Public Safety and the implementation of Justice for our entire Community. Given the level of destruction and terror caused by these flagrantly irresponsible individuals, the negative repercussions of their actions will be evident for some time.

11. Over the course of his tenure as Executive Director and Legal Counsel for the Ethics Commission, defendant Totto has had virtually unrestrained power and authority, with little or no effective oversight from the Ethics Commission, to initiate investigations, choose the targets and subjects of investigations (regardless of whether there was a factual basis therefor), control the scope and extent of such investigations, and determine when and if to charge City employees with violations of the applicable Standards of Conduct.

12. As Executive Director and chief Legal Counsel for the Ethics Commission, defendant Totto has knowingly mislead and deceived the Commissioners of the Ethics Commission, who are unpaid volunteer public spirited individuals who receive no benefit for their services other than that which derives from service to the community.

13. While such Commissioners are intended to provide oversight of the staff of the Ethics Commission, they must rely upon Totto, as Executive Director and Legal Counsel for the Ethics Commission, to properly advise them as to the applicable law

and procedures, including the laws and requirements governing the handling of investigations, and how and when notices of alleged violations of the Standards of Conduct are issued.

14. With his claim of superior knowledge of the applicable laws and procedures, his ability to control the information provided to the Commissioners, and his ability, nurtured over the years, to leak information to his friends and sycophants in the media in order to obtain a favorable news story, Totto has, over the years, effectively undermined the power and prerogatives of the Board.

15. The misapplication of the applicable laws and procedures of the Ethics Commission by defendant Totto has been so pervasive and well established as to become institutionalized and embedded in the actions and dispositions of, and by, the Ethics Commission.

16. As a result, the processes and procedures of the Ethics Commission have been corrupted so that the instigation, handling, and dispositions of Ethics Commission investigations and prosecutions have for years been conducted in violation of the law, and in violation of required due process and proper procedures.

17. Besotted by unchecked power, Totto abused his position to help himself and his friends and allies, punish his enemies and those who would not comply with his demands, exempt himself from the standards of conduct applicable to all other city employees, and terrorize city employees by way of disparate and inconsistent application of the Standards of Conduct.

18. Totto's inconsistent and arbitrary application of the ethical standards violated, not only the very ethical standard he was required to enforce (such as RCH §

11-104) but other applicable laws and published opinions of the Ethics Commission of which he was its Executive Director and Legal Counsel.

19. Examples of Totto helping his friends and allies include:

Whitewash of Questionable Conduct at the Board of Water Supply, and Witness Intimidation.

20. In advisory opinion number 2014-1, the Ethics Commission was asked to review potential ethical violations by Brian McKee, who was employed by the Board of Water Supply as its Chief Information Officer until May, 2011, and whose responsibility included creating and implementing plan to modernize business systems of the Board of Water Supply ("BWS"). Exhibits 6-22 pertain to the following allegations.

21. McKee formed UTC-10 Consulting, LLC and as lead consultant in a consortium, successfully bid on a $1.5 million Water Master Plan contract. After a "review" by Ethics Commission "staff," comprised of defendant Totto, no evidence of ethical misconduct was found despite the following:

a) McKee was undoubtedly involved in creating the specifications for the bids and had admittedly been "instrumental in providing an initial 'road map' for IT modernization," and had inside information as to the strengths and vulnerabilities of the information systems at the BWS;

b) UTC-10 was created in January, 2011, shortly before McKee left the employ of BWS;

c) On information and belief, once it awarded the contract to McKee, the BWS effectively would pay McKee, through his newly formed company, $1.5 million for work which McKee would have performed as an employee of the BWS as a salaried employee being paid $147,576.

d) At least one member of the five member selection committee had worked as a subordinate to McKee only months before while McKee was at the BWS.

e) The majority of the BWS selection committee staff stated that they had little or no formal procurement training.

f) The applicable law, including ROH Section 11-105, prohibited any employee of the city from appearing for one year before any agency of the city or receive any compensation for any services rendered in behalf of any private interest in relation to any matter with respect to which such person was directly concerned, and the subject contract was awarded in June 2012, and the bid process was posted on May 22, 2012, only two days after McKee's departure from the BWS, and the advisory opinion number 2014-1 curiously omits any discussion of this timetable. Instead, defendant Totto, as Executive Director and Legal Counsel, came to the conclusion, a conclusion which was intentionally wrong, that the law did not prohibit such conduct. In coming to this wrongful conclusion, Totto intentionally ignored prior Ethics Commission opinions, including Advisory Opinion No. 242, which states that "former officers and employees are required to wait one year after terminating their relations with the City before being employed by private interest to work on any case, proceeding or application with which he or she previously was involved in any way on the City's behalf."

22. McKee's company, UTC, was also the successful bidder for a Contract for Project Management for Computerized Maintenance Services, in the amount of $950,000. After a so-called "review" by Ethics Commission "staff," comprised of defendant Totto, no ethical misconduct was found despite the following:

a) McKee was undoubtedly involved in creating the specifications for the bids and had admittedly been "instrumental in providing an initial 'road map' for IT modernization," and had inside information as to the strengths and vulnerabilities of the information systems at the BWS

b) At least two of the three member selection committee had worked as a subordinate to McKee only months before while at the BWS.

c) The majority of the BWS selection committee staff stated that they had little or no formal procurement training.

d) The applicable law, including ROH Section 11-105, prohibited any employee of the city from appearing for one year before any agency of the city or receive any compensation for any services rendered in behalf of any private interest in relation to any matter with respect to which such person was directly concerned, and the subject contract, like the Water Master Plan contract, was awarded in June 2012, and the bid process was posted on May 22, 2012, only two days after McKee's departure from the BWS, although the advisory opinion number 2014-1 curiously omits any discussion of this timetable. Again, defendant Totto, as Executive Director and Legal Counsel, intentionally and wrongly concluded that the law did not prohibit such conduct, even though such a conclusion is contradicted by prior Ethics Commission opinions, including Advisory Opinion No. 242, which states that "former officers and employees are required to wait one year after terminating their relations with the City before being employed by private interest to work on any case, proceeding or application with which he or she previously was involved in any way on the City's behalf."

23. McKee had been an employee of EMA, Inc. to be the chief information officer for the BWS, but later became a direct employee and the CIO of the BWS in 2003. In 2008, BWS and McKee's former EMA entered into a Contract for Customer Information System Project Management Services in the original amount of almost $800,000, which later increased almost six-fold due to "change orders". After a so-called "review" by Ethics Commission "staff," comprised of defendant Totto, no evidence of ethical misconduct was found despite the following:

a) The original contract with the BWS was for almost $800,000, but as a result of 11 "change orders," the contract ballooned to $4.2 million, and while it was originally intended to be an 18 month contract, it continued for years.

b) Julie McKee, the wife of Brian McKee, was also a member of UTC-10 Consulting, LLC and having the same address as Brian McKee, and was formally associated with EMA in 2004, 2005, 2006, 2007, 2008.

C) The signator to the 2002 Application for Certificate of Authority to allow EMS, a Minnesota company, to do business in Hawaii, as well as various board members of EMS, shared the same business address as Julie McKee.

24. There was much public interest in the apparent illegal and unethical practices at the BWS, but Totto did not perform more than a perfunctory investigation, and did not refer the matter to law enforcement.

25. The advisory opinion written by Totto, which concluded that no ethical violations occurred, would normally be non-public, and the individual who was the subject of the report would normally be kept confidential, since no violations were found. Yet in an unprecedented and very deliberate move, McKee waived his confidential privacy right, in order for Totto's approval of his conduct to be made public, thereby whitewashing the matter, and effectively squelching further scrutiny.

26. In addition, Totto and DeCaires used the ostensible BWS investigation to identify the whistleblowers' sources, and, with the intent to threaten and intimidate the BWS whistleblowers, launched an improper ethics investigation against the whistleblowers. As intended, this prevented further whistleblowing. However, the complaints of the whistleblowers brought to light issues which subsequently lead to cancellation of the contracts.

27. Totto's motivations for taking the above actions, and any financial connections to McKee, may have been more apparent had Totto filed public financial disclosures as required by law. However, Totto has, improperly exempted himself from this legal requirement, and has refused and failed to file public financial disclosures. By exempting himself from this requirement, Totto has violated the ethical proscriptions found in RCH Section 11-104 which prohibits him from giving special consideration, treatment, advantage, privilege or exemption to himself or any person beyond that which is available to every other person.

Whitewash Of "Illegal" Action Of The Mayor.

28. In 2011, the then-mayor, Peter Carlisle, sought an opinion from the Ethics Commission as to whether he had to repay funds used to pay for the travel expense of the Mayor's wife. The funds were part of a larger gift to the City by a foreign donor, and accepted by the City Council. Exhibits 25, 26.

29. Peter Carlisle is a personal friend of Totto, and, after leaving office, has acted as Totto's attorney in various civil matters. Exhibits 25, 26.

30. The law was unescapably clear, and Totto could not avoid the conclusion that the use of such funds was prohibited, and that it would be unlawful for the Mayor to retain the use of such funds after spending it on travel for his wife. After "commending" the Mayor for bringing the issue to the attention of the Ethics Commission, Totto "recommended" that the Mayor return the funds to the City.

31. While having no choice as to the conclusion of illegality, Totto then did something completely unprecedented: he gave his friend a way out by offering suggestions as to how the situation could be remedied in several ways, including seeking approval by the City Council for special and unique permission, *ex post facto*, to allow the Mayor to keep the funds. Exhibits 26, 26.

32. As suggested by Totto, the Mayor sought, and obtained, such approval from the City Council, and accordingly did not have to repay the funds used for his wife's travel. Exhibits 25, 26.

33. Totto's exceptional response to the Mayor's request for advice stands in sharp contrast to the disparate treatment given to others, such as:

a. The response to Councilmember Nester Garcia, who, after submitting a request for advice to Totto, was not "commended" for bringing the matter to Totto's attention, but was instead subject to investigation and significant punitive action by Totto;

b. The response to plaintiff Katherine Kealoha, who, after submitting a request for advice to Totto, received no advice and no substantive response from Totto, but instead was subjected to multiple, expansive, and vindictive investigations by Totto and DeCaires. Exhibits 27, 69.

34. Such action by Totto constitutes a violation of the ethical proscriptions found in RCH § 11-104 which prohibits him from giving special consideration, treatment, advantage, privilege or exemption to himself or any person beyond that which is available to every other person. Exhibits 26, 62, 63, 65, 29, 58.

Improper Favoritism, Patronage, And Use Of City Resources.

35. Bypassing normal hiring and procurement requirements, Totto hired a family friend to fill a position at the Ethics Commission. Such action violated ethical proscriptions discussed in Ethics Opinions authored by Totto himself, prohibiting patronage and favoritism, as well as RCH § 11-104. Exhibit 28.

36. Thereafter, Totto used official Ethics Commission letterhead to write a letter of recommendation on behalf of the family friend for a position with the Hawaii State government. Such action violated ethical prohibitions against the use of City letterhead for non-governmental purposes. This very prohibition was discussed an

ethics opinion authored by Totto himself three years earlier, wherein he chastised an employee for using City letterhead to write a letter of recommendation. Exhibit 28.

Circumvention of hiring and procurement laws.

37. So as to not jeopardize DeCaires' retirement benefits, Totto sought and obtained approval from the Ethics Commission to give a series of 89 day contracts to DeCaires. The contract was renewed many successive times, which gave DeCaires the virtual benefit of a permanent, full time position, but without loss of her retirement benefits. Exhibit 29.

38. Even if the use of multiple renewals of what is supposed to be a single short term contract is technically within the bounds of the law, it was not ethical for an employee of the Ethics Commission to do so, and it violated the spirit and intent of the applicable laws pertaining to hiring and procurement. On information and belief, Totto continued to seek renewals of DeCaires contract, and also promoted her, making little or no effort to find a qualified and full time investigator, and/or claimed that there were no qualified individuals available. This allowed DeCaires, with the full approval and ratification by Totto, to continue her improper investigations using inside information she obtained while working for HPD, by making false statements and/or manufacturing evidence, disclosing confidential and protected information, and disregarding the requirements and protections of the law. Id.

ABDICATION OF AUTHORITY BY THE ETHICS COMMISSION

39. By allowing and delegating authority to Totto to define for himself the scope and application of the laws and procedures of the Ethics Commission, to determine at his whim which persons or matters were to be investigated, and the scope

and scale of such investigations, the Ethics Commission has perpetuated longstanding illegal practices and customs which have, in effect, constituted its standard operating procedure.

40. In doing so, the Ethics Commission has given defendant Totto, as its Executive Director and Chief Legal Officer, carte blanche ability and authority to act without meaningful oversight, and allowed his overreaching and illegal actions to effectively constitute official policy of the Ethics Commission.

41. Further, by participating in wrongful and illegal prosecutions of city employees orchestrated by Totto, the Ethics Commission has effectively ratified the illegal and wrongful decisions and actions of Totto and DeCaires.

42. For years, Totto has maintained a "Trophy Board" upon which he posted the pictures and names of certain City officials and employees whom he "bagged" for ethics violations. It was an updated board, with the names and pictures of City employees whom he had determined "violated" City ethics rules. Exhibit 31.

43. Having no purpose but to shame others, Totto would take this Trophy Board to seminars and presentations conducted under the auspices of the Ethics Commission, singling these employees out for special public humiliation and approbation, and to brag about having prosecuted them for putative ethics violations. Indeed, when making presentations to city employees, he would often refer to his Trophy Board as his "Wall of Shame."

44. Totto was less interested in educating city employees as to their ethical requirements, than in creating a reign of terror. This had the effect of squelching criticism of him, and preserving his job security despite his own numerous and

significant ethical violations, improper disclosures of confidential information, and illegal investigations. See Exhibit 30.

45. Louis Kealoha attended a mandatory Ethics training class, with possibly over fifty other City employees, and he was dismayed and appalled by Totto's use of this "Wall of Shame" Board. He had indicated to others that this was wrong and unnecessarily humiliating to people. On the same rationale, he had earlier caused the HPD to remove its website which identified persons who had been arrested for DUI.

46. After being informed of a new Ethics training class to be given by Totto, plaintiff Louis Kealoha contacted the City Managing Director and explained to him Totto's "Wall of shame" was no different from a modern day Scarlet Letter, with no other purpose than to humiliate others. Louis Kealoha told the Managing Director that if Totto brought that Board to the upcoming training, he would state his objection out loud and walk out.

47. As a result, Totto did not bring his Trophy Board to subsequent Ethics training sessions. Totto was clearly embarrassed by plaintiff's complaint to the Managing Director, and has since then schemed to exact his revenge.

48. Totto continues to use a different version of his Trophy Board, such as a cartoon drawing of a City bus with occupants as the ethics offenders, continuing to try to hold them up to shame and ridicule. Exhibit 31.

49. Totto and DeCaires have conducted the ethics training in various city departments, but instead of education and information, the focus of such training has been to intimidate and instill fear with threats of seizing employee's computers, "reviewing all employees emails," and "initiating large investigations," on those

employees that did not "comply" with his ethics directives, and ever increasing fines for those who did not quickly cooperate. Exhibits 40, 70.

50. Further, by virtue of his position as the gateway to all investigations and prosecutions for ethical violations, Totto effectively exempted himself from the requirements of the Standards of Conduct, and has knowingly violated Standards of Conduct with impunity, while similar violations by other City employees have been vigorously prosecuted and resulted in fines and sanctions. To wit:

a. While prosecuting and shaming others for the private use of City resources, Totto knowingly used his official letterhead to write a letter of recommendation for a candidate for State judicial office, a clear violation of the Standards of Conduct. In fact, Totto had himself authored at least two advisory opinions, which stated that it is a clear violation of the standards of conduct to use city resources, including agency letterhead stationery signed in an official capacity, to write a letter in support of a matter which is unrelated to the officer's official duties. Exhibit 30.

b. Totto, the Executive Director of the Honolulu Ethics Commission, has never filed a public financial disclosure form, despite the clear requirement of the law, including ROH § 3-8.4(e), which requires public filings for all directors and first deputies of all city agencies. Exhibits 24, 30.

c. Totto has made numerous disclosures to third parties and the news media of confidential information, in violation of the applicable laws and procedures of the Ethics Commission. Exhibits 32, 55, 72, 74, 76, 42.

d. During various investigations aimed at plaintiff Katherine Kealoha, personnel at the Honolulu Prosecutor's Office were hounded and harassed by Totto and DeCaires for private and confidential information of plaintiff Katherine Kealoha, to which by law, they were not entitled. As a result of such aggressive and relentless hounding, Totto and DeCaires were able to obtain confidential information of plaintiff Katherine Kealoha in violation of rights protected by law. Exhibits 26, 42, 74, 75.

e. When Totto was asked to justify his need for various documents and information being requested about plaintiff Katherine Kealoha, he repeatedly stated that he was prohibited by law from giving witnesses details about their investigations. Exhibit 32. Yet, when convenient to their purposes, Totto and DeCaires repeatedly and improperly provided detailed, and often false, information to third parties, including persons interviewed by them, as well as individuals that worked directly with both adult plaintiffs. Totto and DeCaires also repeatedly and improperly leaked such information to the media.

51. Totto also sought to target plaintiffs because he perceived them to be aligned with Corporation Counsel Donna Leong, of whom Totto was openly

contemptuous and resentful, because Leong sought to control Totto's indiscriminate and improper leaks and public pronouncements to the media. Exhibit 32 33.

TOTTO'S RETENTION OF DEFENDANT DECAIRES DESPITE HER QUESTIONABLE HISTORY AND CLEAR CONFLICTS OF INTEREST.

52. Defendant DeCaires was hired by defendant Totto and specifically assigned to investigate plaintiffs in what was a selective and directed effort to "bag" the plaintiffs, against whom he could extract his revenge, and, as a bonus, add two prominent and noteworthy employees to his Trophy Wall "Of Shame".

53. While particularly capable of engaging in boundless investigations unconstrained by the law, as was intended by Totto, DeCaires was also particularly unfit to perform any such investigation in a neutral and unbiased manner.

54. DeCaires has a well-known history of being too willing to ignore the constraints of the law, and of being too willing to pervert the law and lawful procedures in order to achieve her goals. Exhibit 34.

55. While DeCaires was employed by the Honolulu Police Department, she directed an investigation, confinement and prosecution of an individual, Mansour Arekat, that was plainly illegal and unconstitutional, and resulted in a successful lawsuit brought against the City and County of Honolulu for civil rights violations, arising from what had been characterized as a "bogus HPD bust."

56. The violation of civil rights by DeCaires was so clear and egregious that the Ninth Circuit Court of Appeals ordered that liability be established as a matter of law, setting aside a trial verdict, leaving only the question of damages. The City and County of Honolulu eventually paid almost a quarter of a million dollars to that plaintiff in a highly publicized settlement. Exhibit 34.

57. Subsequent to her participation in the Arekat disaster, DeCaires unsuccessfully competed for the position of Police Chief, and was greatly disappointed when plaintiff Louis Kealoha instead was named to this position.

58. DeCaires also sought, but was denied, a promotion to Major during the administration of plaintiff Police Chief Louis Kealoha.

59. DeCaires later retired from the HPD, embittered and under a cloud of failures. When she left, she made it clear to many at HPD that she was very unhappy with how she had not received the promotions she believed she was owed.

60. DeCaires later applied for a position with the Honolulu Prosecutor's office while plaintiff Katherine Kealoha was part of the Prosecutor's management team. She was not hired.

61. Decaires also applied for a Chief of Police position in Pierz County, Minnesota, at a salary level a fraction of any comparable position in Honolulu. She was unsuccessful in this effort as well. Exhibit 36.

62. That DeCaires had an actual conflict of interest in investigating the plaintiffs was apparent from the above, and this was pointed out to Totto. Totto was also repeatedly reminded of his own public statements to the effect that "if there merely is an appearance that there is a conflict of interest, then it is a conflict." Exhibits 37, 39.

63. Further, as Executive Director of the Ethics Commission, Totto was well aware of DeCaires' prior questionable history and methods of doing her job, which previously caused the City and County of Honolulu to pay significant sums to settle the claims of Mr, Arekat for violation of his civil rights by DeCaires. Exhibit 34.

64. Nevertheless, despite the clear conflict of interest on the part of DeCaires, and despite the fact that DeCaires was clearly incapable of properly performing her job and too invested in retribution to perform any investigation of plaintiffs with objectivity, and despite the fact that DeCaires had a history of conducting questionable and illegal investigations, Totto knowingly hired, and continued to retain, DeCaires. In fact, he aggressively fought for her position to be upgraded from an Investigator II position to an Investigator III position, which significantly increased her pay. Exhibit 29.

65. When funding for her position was exhausted, Totto somehow found additional funds to continue to retain DeCaires to specifically investigate the plaintiffs in her many bogus investigations.

66. In doing so, Totto knowingly hired, ratified, promoted, and continued to retain DeCaires, with full knowledge of her improper motives and methods, and indeed knowingly encouraged her to continue her vindictive and illegal investigations of plaintiffs.

TOTTO AND DECAIRES FOCUS UPON PLAINTIFFS

67. Between 2011 and 2013, the adult plaintiffs were engaged in a heated dispute with the Board of Water Supply, based upon outrageous high invoices, sometimes 100 times or more the normal water bill, generated by the BWS's flawed billing system, as well as multiple wrongful debits to plaintiff's checking account, and multiple failures to credit prior payments. Exhibit 23. Hundreds of other BWS customers were also victims of similar significant billing errors.

68. Plaintiff Katherine Kealoha wrote letters and met in-person with various BWS executives and employees, who reacted with threats and intimidation.

69. Plaintiff Louis Kealoha also attempted to address the situation with BWS Executives, without success, and was instead provided false information and asked to "look the other way."

70. After plaintiff Katherine Kealoha threatened to complain further about the grossly deficient BWS billing system and the apparent indifference of the BWS executives to the problem, the following occurred:

a. Various BWS executives, including BWS Board member Adam Wong, suggested that plaintiff would regret taking any action, and that she did not know whom she was dealing with.

b. Like the BWS whistleblowers discussed *infra*, plaintiffs suddenly became the subjects of multiple investigations by Totto and DeCaires.

DEFENDANT'S WRONGFUL INVESTIGATIONS

71. DeCaires and Totto have maliciously and in violation of both the law and procedures of the Ethics Commission, engaged in a course of conduct which was designed, not to investigate valid complaints, but to hunt for ethical violations on the part of the plaintiffs without reasonable cause to believe that violations had occurred.

72. Totto and DeCaires repeatedly and intentionally deceived the members of the Ethics Commission as to the scope, breadth and complexity of the "alleged ethics investigations" that they were conducting on the adult plaintiffs, as well as their friends and family members.

73. To suit his need, justify his investigations of plaintiffs and to obtain continual funding for DeCaires' contract, Totto would refer to his investigations of

plaintiffs as simple and straightforward, and alternatively, as it suited his needs, as highly complex and extensive.

74. For example, after being repeatedly warned (Exhibits 40, 43, 44) by Corporation Counsel that Totto and DeCaires were operating outside of the scope of the legal jurisdiction of the Ethics Commission, Totto would refer to the investigation of the adult plaintiffs as a very simple and straightforward case. But, when seeking additional resources, justifying the continued need for DeCaires, or disclosing confidential information to outside sources, Totto would refer to the same investigation as very complex, claiming it involved 16 or 17 separate investigations and two city departments, as well as interviews of some 200 witnesses. Consistent with his latter assertion but inconsistent with the former, when Totto submitted a proposed witness with respect to a contested hearing involving the plaintiffs, he listed some 86 witnesses.

75. In an attempt to justify and show results for his investigations of plaintiffs, Totto hurriedly prepared and filed against the adult plaintiffs improper Notices of Alleged Violations of the standards of conduct. The said notices were made in violation of the laws and applicable procedures of the Ethics Commission. They were prepared and filed by Totto for improper and malicious purposes, and based upon justifications and standards which were arbitrarily and capriciously applied, and which were contradicted by prior Ethics opinions which he himself authored. Plaintiffs contested the notices of violations and requested a full hearing on all matters.

76. Totto's dissembling as to the scope and nature of the investigations of plaintiffs, and his resulting juggling of two diametrically opposite characterizations of the investigations to suit his needs, could not be sustained. Once the actual facts of the

matters began to be exposed to the Ethics Commission members, Totto was unable to maintain his convenient fictions, and both he and his stories collapsed under the weight of his own deceptions. Thereafter, Totto abruptly went out on "medical leave," completely unable to meet any of the previously established deadlines or attend further hearings in the contested case.

77. Once provided with the facts and circumstances known by plaintiffs of Totto's improper conduct, the Ethics Commission disqualified Totto from the contested case and canceled as moot the hearing scheduled to consider his disqualification. Outside counsel was thereafter appointed to replace Totto as legal counsel in the contested case.

78. Moreover, despite the fact that Totto had been notified of significant reasons why DeCaires had a conflict of interest in investigating plaintiffs, and despite there being significant evidence of abusive investigation tactics undertaken by DeCaires, Totto refused to acknowledge DeCaires' conflict of interest, refused to recognize her unsuitability for her role, and in fact repeatedly caused her 89 day contracts to be renewed in order for her to continue her wrongful investigations of plaintiffs. In doing so, he knowingly and expressly approved and ratified the actions of DeCaires.

79. Documented requests that DeCaires should be conflicted out of the investigations of plaintiffs were made on multiple occasions by both adult plaintiffs, as well as by Legal Counsel for HPD, by Prosecutor Keith Kaneshiro, and by attorneys for plaintiffs. Multiple reasons were cited and documented, but Totto refused to

acknowledge the conflict, despite his own oft-repeated advice that "if there is a mere appearance of a conflict, then there is one." . Exhibits 37-39.

80. In her unlawful zeal to create any ethical violation whether real or manufactured, and as evidence of her conflict of interest and improper motives, and with the full approval of and ratification by Totto, DeCaires violated the rights of HPD officers, witnesses and the plaintiffs, provided false and defamatory information to witnesses and others, violated *Garrity* rights of witnesses and plaintiffs, violated the laws and procedures of the Ethics Commission, shared confidential as well as fabricated information with others, and improperly caused the adult plaintiffs to be involved in other proceedings and investigations, all while continuing to benefit from the continued renewal of her 89 day contracts. Exhibit 41.

81. The bogus investigations by DeCaires under the auspices of the Ethics Commission and specifically approved by Totto, were allowed to multiply and spun off into many wrongful investigations, including investigations into areas of which the Ethics Commission had no jurisdiction, including but not limited to departmental management matters. In addition to furthering their unlawful goals, this scheme had the further effect of justifying the more than seven renewals of DeCaires' 89-day contract, as well as the increases in her pay grade during the same time period. Exhibits 43, 44.

82. In the course of proceedings held in the contested case, it became clear that the Commissioners of the Ethics Commission had no knowledge of how out-of-control Totto and DeCaires had been in the course of these bogus investigations. With this realization, Ethics Commission unanimously voted to settle the contested case and dismiss the matters against the adult plaintiffs on the very same day.

83. The process and procedures of the Ethics Commission have been so corrupted that the instigation, handling, and dispositions of Ethics Commission investigations and prosecutions have for years been conducted in violation of the law, without following proper procedures.

84. DeCaires and Totto engaged in far reaching, extensive and disruptive investigations which were designed to disrupt, poison the minds of witnesses and harass rather than reveal, all causing damage to basic rights of the plaintiffs and others. Illegal investigations and actions by DeCaires and/or Totto included:

a) So-called "interviews" of witnesses by DeCaires, where the witnesses were asked few real questions, and instead were provided knowingly false and defamatory "facts" which was intended to, and did accomplish, disruption to plaintiff Louis Kealoa's command, to plaintiff Katherine Kealoha's work place, and to the minor plaintiff's school environment, as well as damage their professional standing and reputations. Exhibit 42.

b) Making knowingly false statements by DeCaires in one or more sworn declarations filed with the Ethics Commission, including her false claim that plaintiff Louis Kealoha was a subject of an ethics investigation in 2013. Exhibits 46, 62.

c) Making knowing false statements by Totto to his attorney that plaintiff Katherine Kealoha had previous ethics violations. Exhibits 30, 59.

d) When DeCaires and Totto learned that an employee of the Honolulu Prosecutor's office had attended a portion of a civil lawsuit in which plaintiff Katherine Kealoha was a defendant (and which she ultimately prevailed in its entirety), they immediately concluded, with no basis to support such a conclusion, that the employee must have done so on City time. Rather than simply contacting the employee to determine whether leave was taken or simply reviewing the time records of the employee to confirm that the employee took personal leave to attend the civil trial, which would have confirmed that the employee had not taken any City time to attend the trial, DeCaires and Totto opened an extensive investigation, repeatedly contacting various members of the Administration of the Prosecutor's office, calling into questions the integrity and ethics of the employee, badgered and questioned multiple witnesses, sought extensive records of the Prosecutor's office, and openly and wrongfully accused the employee of abusing City resources, with no valid basis therefor. Exhibit 3.

e) When certain witnesses to an investigation did not give DeCaires and Totto the "desired" testimony, even though such desired testimony was not true, they vindictively and illegally opened separate investigations of the witnesses in an attempt to dredge up an ethics violation, in violation of the law and procedures applicable to the Ethics Commission. Id.

f) Because they did not like the answers provided by witnesses who were relatives of plaintiffs, DeCaires and Totto, with the intent to harass and intimidate the witnesses, launched an extensive and illegal investigation into whether the relatives were in violation of a particular Standard of Conduct prohibiting gifts to City employees by living rent-free on the plaintiff's property, despite a clear provision in the law which exempted relatives from the prohibition. Id.

g) DeCaires and Totto launched an investigation into whether it was improper for a an officer to accept, on behalf of his division, an authorized and finance approved, donated carpet section and refrigerator to be used in an HPD common area. Id.

WRONGFUL INVESTIGATION PERTAINING TO GERARD PUANA.

85. Totto and DeCaires launched an investigation of a criminal matter involving plaintiff Katherine Kealoha's uncle, Gerald Puana. In the criminal matter, Puana was arrested for unauthorized entry into a neighbor's house. Plaintiff Katherine Kealoha had no involvement with the handling of the case by the Honolulu Prosecutor's Office because the matter was assigned to another division which was not supervised by her. Exhibit 71.

86. As his niece, plaintiff Katherine Kealoha posted bail for Puana following his arrest. Exhibit 71

87. Plaintiff Katherine Kealoha also posted bail for Puana in other traffic matters. Id.

88. Puana has never reimbursed plaintiff for any of the bail expenses, and she has not asked him to do so.

89. Such criminal matters were outside the scope of the jurisdiction of the Ethics Commission. Exhibits 43, 44.

90. Totto and DeCaires launched an improper investigation of the Puana matter.

91. Totto and DeCaires falsely concluded that the assignment of the criminal matter to another division in the Prosecutor's Office was due to a civil lawsuit between Puana and Kealoha. But the civil lawsuit occurred much later, in 2013. In 2011, the parties were still on good terms. This is evidenced by cordial and happy emails Puana sent to Kealoha in June of 2011, discussing matters such as Puana's partner who lived with him at their Aunty Rose's house, and his ventures in Waimanalo.

92. In 2011, Puana voluntarily submitted himself to drug rehabilitation at the Sand Island Treatment Center, which does not accept a patient unless the patient voluntarily checks in. Puana admitted under oath that he listed Kealoha, not his mom or his brothers and sisters, as his emergency contact. In fact, plaintiff Katherine Kealoha was the only one in the family who was willing to post Puana's bail and bring him the personal hygiene items he needed while he was at the treatment center. Plaintiff went to Puana's mother's house, at Puana's specific request, to retrieve personal items he requested. Other personal and hygiene items were purchased by plaintiff Katherine Kealoha at her expense. Puana himself admitted that, while at the treatment center, he never made negative comments about plaintiff Katherine Kealoha. Exhibits 43, 44.

93. Accordingly, Totto and DeCaires could not reasonably conclude that the criminal prosecution of Puana and any related activity on the part of plaintiff Katherine Kealoha was due in any part to any dispute or bad feeling between Puana and Kealoha, since, as noted above, the parties' falling out and subsequent civil lawsuit occurred only years later, that the evidence existing at the time of his arrest shows that they were on good terms at the time, that Kealoha had no involvement in the prosecution of the criminal matter, that Kealoha provided bail money for Puana, that she bought and

provided him his personal and hygiene items when he voluntarily checked into the treatment center, and that he named her and not any immediate family members as his emergency contact at the treatment center.

94. In addition, the Ethics Commission had no jurisdiction over any aspect of the said matters, and it was therefore improper for Totto and DeCaires to expend City resources investigating such matters.

DECAIRES' EFFORTS TO MICROMANAGE THE HONOLULU POLICE DEPARTMENT.

95. Frustrated by her failed opportunity to run HPD as its chief, DeCaires, with Totto's approval, utilized the investigative powers of the Ethics Commission to try to run HPD from her armchair investigator's position, by questioning management decisions of HPD under the guise of an "ethics investigation" even though the Ethics Commission should have no authority, or interest, in such management decisions. Exhibits 57, 66, 75.

96. For example, DeCaires and Totto launched an investigation into whether it was "ethically" improper for the Chief of Police, as part of his management prerogative, to designate the HPD officer who would be allowed to attend the FBI National Academy training on the mainland. Such an investigation was instituted, and conducted by Totto and DeCaires, in violation of the applicable laws and procedures. Exhibit 3.

WIDE RANGING ABUSIVE AND EVER EXPANDING INVESTIGATIONS

97. In all, Totto and DeCaires have, to plaintiffs' knowledge, launched at least 19 separate investigations, including vindictive investigations against plaintiffs and retaliatory investigations against witnesses who they deemed to be "uncooperative". Exhibit 3.

98. All investigations were instituted illegally, in violation of the applicable laws and procedures of the Ethics Commission, and with improper intent.

99. These illegal and improper investigations resulted in no discovery of any violation of the Standards of Conduct. Exhibit 37, 30, 42, 32, 45, 47, 48, 49, 50, 51, 52, 53,54, 55, 61, 62, 67. But in the course of these illegal investigations:

a) Totto and/or DeCaires deliberately made false and defamatory statements about plaintiff to third parties, with the purpose and effect of placing plaintiffs in a false light, damaging the personal and professional reputations of plaintiffs, and causing such third parties to question the integrity of plaintiffs. In some instances, employees under the command of plaintiff Louis Kealoha, transferred out of specific divisions or retired, rather than work under one whose integrity was called into question by the Ethics Commission investigator;

b) Employees under the command of plaintiff Louis Kealoha were specifically targeted and harassed by the DeCaires, simply because they were unwilling to "lie" and "create false claims," against the Plaintiffs as Totto and DeCaires implied;

c) Totto and/or DeCaires deliberately made false and defamatory statements about plaintiff to other state and federal agencies, for the purpose and with the effect of causing plaintiffs to be embroiled in litigation and/or adversary actions by such agencies and/or to create a conflict of interest which would disqualify such agencies from investigating the defendants themselves;

d) Totto and/or DeCaires deliberately and improperly leaked confidential and false information to the federal authorities and to the federal public defender;

e) Totto and/or DeCaires deliberately and improperly leaked confidential and false information to the media. In some instances, the media was informed about Ethics Commission investigations only days after defendant DeCaires was assigned to the matter Exhibits 52-55.;

f) Totto and/or DeCaires deliberately disrupted and harassed the Prosecutor's office and interfered with the orderly operation of that office Exhibits 3, 74;

g) Totto and/or DeCaires disrupted and interfered with plaintiff Louis Kealoha's command, and interfered with the orderly operation of the HPD, Exhibits 3, 62, 57.;

h) Totto and/or DeCaires intentionally interfered with existing contractual relationships of the plaintiffs, including but not limited to their contracts of employment. For example, defendant DeCaires improperly obtained a copy of plaintiff Louis Kealoha's contract with the City from the Honolulu Police Commission and thereafter attempted to intimidate the Police Commission's chairman to cause plaintiff to be terminated, , Exhibits 67, 71, 72, 75;

i) Totto and/or DeCaires disrupted and interfered with plaintiff Katherine Kealoha's work, hampered her ability to perform her job, hampered her ability to properly supervise other prosecutors, and impeded the investigation and prosecution of important cases, Exhibit 64;

j) Totto and/or DeCaires deliberately harassed and bullied employees of both the Prosecutor's office and HPD, Exhibits 68, 71, 72, 73, 75, 76;

k) Totto and/or DeCaires deliberately harassed and bullied members of the Police Commission, specifically threatening the chairperson of the Police Commission with false claims of non-existent conflicts of interest to improperly attempt to remove him from evaluating plaintiff Louis Kealoha, including threats to fine him with "larger fines" if he did not bow to their wishes.

l) Totto and/or DeCaires deliberately, improperly and illegally shared with other state and law enforcement agencies information provided plaintiffs, by witnesses, by HPD officers, and by other County employees, in violation of their Garrity and other rights. The violations were so systematic and egregious that, in an unprecedented move, the State Of Hawaii Organization of Police Officers ("SHOPO") filed a formal union grievance, stating that HPD officers were being compelled to appear before the Ethics Commission "to answer questions without being informed of the allegations made against them or being afforded the opportunity to view the complaint," and were "not being afforded any Garrity Rights prior to being compelled to answer questions." The police union expressly found that "the Ethics Commission, a department of the City and County of Honolulu is in violation of [the Collective Bargaining Agreement]," Exhibits 41, 45, 51, 47, 48, 49, 51;

m) Totto and/or DeCaires deliberately, improperly and illegally shared with third parties, including the attorney for Gerard Puana, information provided plaintiffs, by witnesses, by HPD officers, and by other County employees, in violation of their Garrity and other rights, Exhibits 51, 60;

n) Totto and/or DeCaires deliberately and/or knowingly interfered with, caused damage to, plaintiff's prospective economic advantages.

100. While criticizing and even prosecuting others for misuse of city resources, defendants Totto and DeCaires, in their blind fervor to add plaintiffs to Totto's Trophy Wall, misused city resources to re-investigate matters which had been fully adjudicated in separate civil proceedings, and about issues which were not within the jurisdiction or purview of the Ethics Commission Exhibits 42-44, 60.

IMPROPER AND FALSE DISCLOSURES AND VIOLATION OF CONFIDENTIALITY.

101. Totto and DeCaires misused their positions to knowingly violate the clear confidentiality provisions of the law and procedures of the Ethics Commission, in order to obtain advantage for themselves and/or effect results not pertaining to the goals and functions of the Ethics Commission. Such violations include:

a) Disclosure of false information to State taxing authorities under the auspices of the Honolulu Ethics Commission, which caused plaintiffs to be subject to audit requests by the State. After the requested information was provided by plaintiffs to the taxing authorities resulting in the plaintiffs' complete exoneration, a representative of the taxing authority indicated that they had never before received such false and material information from a fellow governmental agency, Exhibits 32, 67;

b) Continuous leaking of confidential information to the news media. For example, they leaked information about HPD officers being subpoenaed to testify at a closed hearing of the Ethics Commission, and falsely informed the news media that plaintiffs were seeking to question "whistleblowers" in an upcoming hearing in the contested case. But in fact, while subpoenas were issued by the Ethics Commission at the behest of the plaintiffs, none of the HPD officers were "whistleblowers," and none of the HPD officers were ever served with the subpoenas. The hearing itself was later cancelled because it was deemed moot when Totto was disqualified from the case. No one outside of the Ethics Commission staff knew of these subpoenas, and so the news media could not have known that HPD witness were subpoenaed and not served, but for the leaks by Totto and/or DeCaires, Exhibits 30, 52-55;

c) Making false and unauthorized disclosures to third parties of information about plaintiffs for the purpose of obtaining a personal advantage. For example, in an effort to quash plaintiffs' complaints against him for his own ethical violations, Totto hired a private attorney to represent his personal interests, and in the process offered to dismiss a single pending ethics complaint which he filed against each plaintiff in his official capacity as Executive Director of the Ethics Commission, in exchange for their withdrawal of eight pending ethics complaints which had been filed against him personally, Exhibits 30, 49, 50, 61.

d) Further, Totto falsely and maliciously informed his personal attorney that plaintiff Katherine Kealoha had been previously found to have violated the Standards of Conduct, in order to leverage his personal position, Exhibit 59.

e) In violation of the law and the procedures of the Ethics Commission, DeCaires has repeatedly informed persons who were not associated with her investigation that she was investigating the plaintiffs, and made knowingly false statement regarding the results of said investigations. All such matters, even if true, were confidential matters and it was illegal and improper for DeCaires to disclose such information. DeCaires' knowingly violated the confidentiality requirements of the law in order to give more weight to the knowingly false statements made about the results of her bogus investigations. Such false statements were made to fellow workers and colleagues of the adult plaintiffs, and to school administrators, security officials and staff of the school attended by the minor plaintiff, all to plaintiffs' damage and prejudice, Exhibits 42, 46, 62, 72.

f) Totto provided confidential information about his ethics investigations of plaintiffs to other County officials. Such confidential information, illegally provided to other County officials, included false information negatively affecting the plaintiffs, Exhibit 48.

g) The actions of Totto and/or DeCaires violated specific provisions of the applicable laws, including but not limited to a prohibition against disclosing confidential information gained by reason of their office or position or use of such information for the personal gain or benefit of anyone, and a proscription that all files, records, reports, writings, documents, exhibits, electronic records and other information prepared or received by the commission or its staff or consultants shall be held in confidence and no information as to the contents thereof shall be disclosed.

h) In conducting interviews of witnesses, DeCaires and Totto made knowingly false statements about matters which, even if true, they were legally required to keep confidential, Exhibit 42.

102. Totto knew, and admitted knowing, that a person would be specifically notified if the person became a target of an ethics commission investigation. Despite this, defendants knowingly and recklessly, in violation of the law and their own procedures, commenced a number of investigations in which plaintiffs were the target of said investigations, without notifying plaintiffs of the same, except, perhaps, through media leaks, Exhibits 73, 68.

103. Totto and DeCaires, as officers of the City agency investigating ethical violations, knowingly provided confidential information about their investigation to the federal public defender, causing the public defender to subpoena investigative files about which he would otherwise have had no knowledge but for the improper disclosures by DeCaires and Totto. Exhibit 51.

104. Thereafter, they caused confidential Ethics Commission files, including information which they fabricated, to be provided to the Federal Bureau of Investigation, triggering a federal investigation which included federal subpoenas for information and witnesses who were already part of the investigations being conducted by Totto and DeCaires. Exhibit 45.

105. Totto and/or DeCaires also improperly leaked this information to the news media. Exhibit 52

106. The morning after a specific Hawaii News Now "Exclusive" story about adult plaintiff's being subjects of an ethics investigation, minor plaintiff was verbally tormented by several students. The incident culminated with the minor plaintiff being physically assaulted by these students and her personal property was later stolen and destroyed by these same individuals. This happened on multiple occasions. She has

suffered damages, including but not limited to lower grades, loss of friends and social esteem, severe anxiety, emotional distress, loss of educational and economic opportunities. Exhibits 53-55.

107. As a result of the defendants' illegal and improper actions, the minor plaintiff was bullied at school, harassed via various forms of social media, humiliated amongst peers and the general public, and was ultimately forced to transfer to another school.

ETHICAL LAPSES BY DEFENDANTS TOTTO AND DECAIRES

108. Totto and/or DeCaires are themselves now the subject of eight substantive ethics complaints filed with the Ethics Commission alleging conduct which is not only unethical, but potentially illegal, filed by Plaintiff Katherine Kealoha and others. The subject of such ethics complaints include:

a. Misuse of City Resources

b. Preferential and unequal treatment

c. Misuse of City Seal and City Logo

d. Misuse of City Letterhead for non-official use.

e. Misuse of his position for personal benefit

f. Improper and unauthorized leaks of confidential information

g. Failure to file public financial disclosures

109. Further, Totto misused his position and authority in an attempt to leverage the ethics complaint he filed against plaintiffs to obtain a personal and improper advantage with respect to the many ethics complaints made against him by plaintiff Katherine Kealoha.

110. While disqualified from the matter and prohibited from accessing the matter, Totto misused his position to obtain confidential transcripts of the executive sessions of the Ethics Commission on a matter involving the plaintiffs, and then attempted to leverage for his personal benefit the information thereby obtained. For this, Totto was chastised and punished by the Ethics Commission.

111. Defendants Totto and DeCaires knowingly made false statements to the Ethics Commission in order to accomplish their goals. Such false statements include, but are not limited to:

a) In order to justify her investigation of plaintiff Louis Kealoha, DeCaires deliberately lied about previously conducting an investigation of him, when in fact, there was no prior investigation, and DeCaires had actually only interviewed plaintiff Louis Kealoha as a witness in an unrelated investigation in which he was not a subject of investigation. Exhibits 62, 46

b) Totto alternatively lied about the scope and complexity of the investigation of the plaintiffs in order to obtain and continue funding, and later, under oath, attempted to downplay the investigation for the purpose of obtaining an advantage in pre-hearing motions. Exhibits 3, 5, 30.

112. An independent investigator has been appointed by the Ethics Commission to investigate the complaints filed against Totto/DeCaires. Plaintiffs expect that Totto and DeCaires will be investigated with the same vigor that they themselves performed of County personnel other than their friends, that they will be prosecuted for

their unethical and illegal actions, and that they will be subject to the same or similar fines and penalties as have been imposed on other County personnel (other than their friends) for similar serious violations of the Standards of Conduct.

113. Defendant DeCaries is no longer an investigator with the Ethics Commission and her contract with the Ethics Commission is not expected to be renewed.

114. Totto is expected to resign and/or be terminated from the Ethics Commission imminently, and/or within days.

DAMAGE TO PLAINTIFFS' PROSPECTIVE BUSINESS OPPORTUNITIES WITH A SOLAR COMPANY

115. In May, 2014, plaintiff, along with an officer with the Honolulu Police Department, and a third person, Katherine Kealoha formed a company called Discount Energy Solutions, LLC, for the purpose of engaging in residential and commercial photovoltaic and solar installation. Exhibits 27, 64, 69.

116. Before entering into any business dealings involving the new company, plaintiff Katherine Kealoha wrote to Totto, with a Request for Advice, pursuant to the stated procedures of the Ethics Commission, seeking an opinion as to whether it was permissible to engage in such outside employment. Exhibits 27, 68, 71, 73.

117. Totto failed, neglected, and/or refused to timely respond to the Request for Advice. As a result, Plaintiff Katherine Kealoha did not engage in any business with Discount Energy Solutions, and withdrew from the new company. Shortly thereafter, the HPD officer also withdrew from the company without doing any business. By May 2015, only the third person remained associated with the company. Exhibits 27, 64, 68.

118. As a result of Totto's negligent or intentional failures, Totto has effectively damaged plaintiff's prospective business opportunities and caused damage to plaintiffs.

OTHER DAMAGES AND CLAIMS

119. Defendants intentionally and/or negligently inflicted emotional distress upon plaintiffs.

120. Defendants' actions have been outrageous and beyond the bounds of human decency.

121. As a result of the defendants' actions, plaintiffs have been damaged in professional and personal reputations

122. As a result of the defendants' actions, plaintiff Louis Kealoha suffered damage to his command.

123. As a result of the defendants' actions, plaintiff Louis Kealoha suffered damage to his prospective economic opportunities.

124. As a result of the defendants' actions, plaintiff Katherine Kealoha' has been damaged in her ability to perform her job.

125. As a result of the defendants' actions, Katherine Kealoha suffered damage to her prospective economic opportunities.

126. As a result of the defendants' actions, the minor plaintiff has been damaged in her ability to study and perform effectively at school. She has been taunted, bullied and humiliated by her schoolmates following the leaks and false information propagated by defendants.

127. As a result of the defendants' actions, the minor plaintiff suffered damage to her prospective economic opportunities.

128. The false statements made by defendants were defamatory and defamatory per se.

129. Plaintiffs have been damaged by the actions of defendants, including:

a) Bodily injury

b) Emotional Distress

c) Economic damage

d) Loss of economic opportunity

e) Loss of future educational and economic opportunity (child)

f) Attorney's fees and costs

g) Other damages to be proven.

108. Defendants wrongfully, willfully and/or negligently performed their investigation, subjecting them to liability under *Tseu, State ex rel. Hobbs v. Jeyte*, 88 Hawai'i 85, 962 P.2d 344 (1998).

109. Defendants caused plaintiffs to be damaged by the negligent hiring/re-hiring and employment/continued employment of Totto and DeCaires.

110. Furthermore, by their wrongful actions, Totto and DeCaires caused plaintiffs to be embroiled in litigation and/or adverse actions with other state and federal agencies, entitling plaintiffs to relief, including relief under *Uyemura v. Wick*, 551 P.2d 171 (1976).

WHEREFOR, Plaintiffs pray as follows:

A. For an award of general and special damages, jointly and severally, against each defendant;

B. For a substantial award of punitive damages consistent with the outrageous, reckless, and intentional conduct of the defendants.

C. For an award of their attorney's fees and costs;

D. For Declaratory relief, determining that the process and procedures of the Ethics Commission in instigating investigations and prosecuting violations of the Standards of Conduct are in violation of the law, and to determine the proper procedures as described in the applicable statutes and rules;

E. For injunctive relief, requiring the Ethics Commission and defendants to comply with the law and the required procedures for instituting investigations and prosecuting violations of the Standards of Conduct;

F. For such other and further relief as to this Court seems just and proper.

DATED: HONOLULU, HAWAII, June 16 2016.

KEVIN P. H. SUMIDA
ANTHONY L. WONG
LANCE S. AU
STEPHEN K. ROY
Attorneys for Plaintiffs

VERIFICATION

STATE OF HAWAII)
: SS.
CITY AND COUNTY OF HONOLULU)

KATHERINE E. KEALOHA, being first duly sworn, on oath, deposes and says that she is the plaintiff named above, that she has read contents of the Verified Complaint, and its exhibits, and that the same are true and correct to the best of her knowledge and belief.

KATHERINE E. KEALOHA

Subscribed and sworn to before me
this 16th day of June, 2016.

Notary Public, State of Hawaii

Kristine H. Nekomoto
Printed Name

My commission expires: 4/9/14 2018

KRISTINE H. NEKOMOTO ★ NOTARY 06-200 PUBLIC ★ STATE OF HAWAII

Doc. Date:	6/16/16	**# Pages:**	1,114
Name:	KRISTINE H. NEKOMOTO		**First Circuit**
Doc Description:	Verified Complaint for Damages, Declaratory & Injunctive Relief		
Signature		**Date** 6/16/16	
NOTARY CERTIFICATION			

KRISTINE H. NEKOMOTO ★ NOTARY 06-200 PUBLIC ★ STATE OF HAWAII

1ST CIRCUIT COURT
STATE OF HAWAII
FILED

2016 JUL 11 PM 1:09

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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

LOUIS M. KEALOHA, KATHERINE E. KEALOHA, and KRISTINA KEALOHA, a minor child, by her next friend, KATHERINE E. KEALOHA, Plaintiffs, vs. CHARLES W. TOTTO, individually and as Executive Director and Legal Counsel of the Honolulu Ethics Commission; LETHA A.S. DECAIRES, individually and as investigator for the Honolulu Ethics Commission; HONOLULU ETHICS COMMISSION; and THE CITY AND COUNTY OF HONOLULU, Defendants.	CIVIL NO. 16-1-1166-6 GWBC (Non-Motor Vehicle Tort) DEFENDANTS HONOLULU ETHICS COMMISSION AND CITY AND COUNTY OF HONOLULU'S MOTION FOR MORE DEFINITE STATEMENT AND MOTION TO STRIKE; MEMORANDUM IN SUPPORT OF MOTIONS; NOTICE OF HEARING; CERTIFICATE OF SERVICE Hearing Date: August 5, 2016 Time: 3:00 p.m. Judge: Honorable Gary W. B. Chang Trial Date: None.

EXHIBIT "B"

DEFENDANTS HONOLULU ETHICS COMMISSION
AND CITY AND COUNTY OF HONOLULU'S
MOTION FOR MORE DEFINITE STATEMENT AND MOTION TO STRIKE

Defendants Honolulu Ethics Commission and City and County of Honolulu ("City Defendants") move for a more definite statement and to strike regarding the Verified Complaint for Damages, Declaratory and Injunctive Relief ("Complaint"), filed on June 17, 2016.

Pursuant to Rule 12(e) of the Hawai'i Rules of Civil Procedure (HRCP), City Defendants seek a more definite statement because the Complaint, despite its inflammatory language, length, and prolixity, does not clearly identify any claims against the City Defendants (nor against any other Defendant), and is so vague and ambiguous as to preclude City Defendants from formulating any reasonable response. By failing to provide such information, the Complaint does not comply with the mandate in HRCP Rule 8(a) that a complaint shall contain "a short and plain statement of the claim showing that the pleader is entitled to relief."

The City Defendants are therefore entitled to an order directing Plaintiffs to provide a more definite statement identifying the specific claims against each named Defendant, including allegations regarding the elements of those claims, and such further information as required by the Court.

Pursuant to HRCP Rule 12(e), City Defendants also seek to strike Plaintiffs' redundant, immaterial, impertinent, and scandalous matters from the Complaint and the nearly thousand pages of exhibits attached thereto.

This motion is supported by the enclosed memorandum of law, the record herein, and such additional matters the Court may entertain, including oral argument, at the time of the hearing on this motion.

DATED: Honolulu, Hawai‘i, July 11, 2016.

DONNA Y. L. LEONG
Corporation Counsel

By ______________________
PAUL S. AOKI
ROBERT M. KOHN
Deputies Corporation Counsel

Attorneys for Defendants
HONOLULU ETHICS
COMMISSION and CITY AND
COUNTY OF HONOLULU

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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

LOUIS M. KEALOHA, KATHERINE E. KEALOHA, and KRISTINA KEALOHA, a minor child, by her next friend, KATHERINE E. KEALOHA, Plaintiffs, vs. CHARLES W. TOTTO, individually and as Executive Director and Legal Counsel of the Honolulu Ethics Commission; LETHA A.S. DECAIRES, individually and as investigator for the Honolulu Ethics Commission; HONOLULU ETHICS COMMISSION; and THE CITY AND COUNTY OF HONOLULU, Defendants.	CIVIL NO. 16-1-1166-6 GWBC (Non-Motor Vehicle Tort) MEMORANDUM IN SUPPORT OF MOTIONS

MEMORANDUM IN SUPPORT OF MOTIONS

INTRODUCTION

The City Defendants[1] move for a more definite statement of the claims against them because the Complaint,[2] despite its inflammatory language ("terrorize," "whitewash," "favoritism,", "patronage, "abusive"), length, and

[1] Defendants Honolulu Ethics Commission and City and County of Honolulu.

[2] Verified Complaint for Damages, Declaratory and Injunctive Relief, filed on June 17, 2016.

prolixity, does not clearly identify any claims against the City Defendants (nor against any other Defendant), and is so vague and ambiguous as to preclude City Defendants from formulating any reasonable response.

For example, while the Complaint is entitled "Verified Complaint for Damages, Declaratory and Injunctive Relief," it fails to articulate what declaratory and injunctive relief the Plaintiffs seek.

By failing to provide such information, the Complaint does not comply with the mandate in Rule 8(a) of the Hawai'i Rules of Civil Procedure (HRCP) that a complaint shall contain "a short and plain statement of the claim showing that the pleader is entitled to relief." City Defendants are therefore entitled to an order directing Plaintiffs to provide a more definite statement identifying the specific claims against each named Defendant, including allegations regarding the elements of those claims, and such further information as required by the Court.

City Defendants also seek to strike Plaintiffs' redundant, immaterial, impertinent, and scandalous matters from the Complaint and the nearly thousand pages of exhibits attached thereto. Plaintiffs have improperly appended evidentiary materials to their Complaint, which are prejudicial both to Defendants and to individuals not named as parties in this lawsuit.

THE COMPLAINT

The Complaint contains 131 numbered paragraphs[3] and is 44 pages long, including a "Verification" by Plaintiff Katherine Kealoha stating that the contents of the Complaint and attached exhibits are "true and correct" but not stating that she has personal knowledge of any matter.

The Complaint lists 76 exhibits, though some of those exhibits are missing. The exhibits are nearly a thousand pages long (Bates nos. KCOM 1–991).[4]

The Complaint contains no list of counts, no clearly identified claims against the City Defendants, and in fact no clearly stated claim against any Defendant showing that any pleader is entitled to relief.

LEGAL STANDARDS

A. HRCP Rule 8(a) – General rules of pleading.

HRCP Rule 8(a)(1) requires a pleading to contain "a short and plain statement of the claim showing that the pleader is entitled to relief," which "provides defendant with fair notice of what the plaintiff's claim is and the grounds

[3] The Complaint misnumbers the three paragraphs after paragraph 129 as 108, 109, and 110.

[4] The copy of the exhibits provided to City Defendants contained no numbered tabs nor a Bates-numbered list of exhibits indicating where each one begins, making it difficult to locate the more than 70 documents cited at the end of the numerous paragraphs in the Complaint.

upon which the claim rests."[5]

B. HRCP Rule 12(e) – Motion for more definite statement.

HRCP Rule 12(e) permits a party to move for a more definite statement of a pleading that is "so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading." It is within the court's discretion whether to grant the motion, and the court may dismiss the complaint if the order is violated.[6]

Although Rule 12(e) motions are generally disfavored, they are appropriate when a pleading does not satisfy the requirement of Rule 8(a) that a pleading contain allegations as to each element of a claim.[7]

In addition, in "cases involving public officials who may be entitled to qualified immunity, the court is more likely to grant a Rule 12(e) motion."[8]

[5] *Childs v. Harada*, 130 Hawai'i 387, 404 (App. 2013), quoting *In re Genesys Data Technologies, Inc.*, 95 Hawai'i 33, 41 (2001).

[6] *McHenry v. Renne*, 84 F.3d 1172, 1179 (9th Cir. 1996) ("[T]he judge may in his discretion, in response to a motion for more definite statement under Federal Rule of Civil Procedure 12(e), require such detail as may be appropriate in the particular case, and may dismiss the complaint if his order is violated.") When a Hawai'i rule of civil procedure is patterned after an equivalent federal rule, interpretations by the federal courts are considered highly persuasive. *Gap v. Puna Geothermal Venture*, 106 Hawai'i 325, 341 (2004) (citation omitted).

[7] *Gorthy v. Clovis Unified Sch. Dist.*, No. CVF05-1052RECJLO, 2006 WL 236939, at *6 (E.D. Cal. Jan. 31, 2006), quoting 2 Moore's FEDERAL PRACTICE, § 12.36[1] (3d ed.).

[8] *Sneller v. City of Bainbridge Island*, No. C07-5338RBL, 2007 WL 4562882, at *2 (W.D. Wash. Dec. 21, 2007).

"Qualified immunity is the right to be immune from suit."[9] This issue of whether a party is entitled to qualified immunity must be resolved early in the case to preserve this right.[10] It is incumbent upon a court to exercise its discretion so that officials who may be entitled to qualified immunity are not subjected to unnecessary and burdensome discovery.[11]

C. HRCP Rule 12(f) – Motion to strike.

HRCP Rule 12(f) provides that "[t]he court may order stricken from any pleading … any redundant, immaterial, impertinent, or scandalous matter." "A motion to strike must be made before responding to the challenged pleading."[12] A court has considerable discretion in ruling on a motion to strike.[13]

The rule is also "designed to reinforce the requirement in Rule 8(e) that pleadings be simple, concise, and direct."[14] A court may consider the fact that "[i]t would take significant judicial resources for the court to sift through the

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[9] *Id.*, citing *Mitchell v. Forsyth,* 472 U.S. 511, 526 (1985).

[10] *Id.*, citing *Mitchell.*

[11] *Id.*, citing *Crawford-El v. Britton,* 523 U.S. 574, 597–98 (1998); *Harlow v. Fitzgerald,* 457 U.S. 800, 818 (1982) (discovery should not be allowed until the threshold immunity question is resolved).

[12] Wright, Miller, Kane & Spencer, 10B FEDERAL PRACTICE AND PROCEDURE § 1380.

[13] *Id.*, § 1382 ("The district court possesses considerable discretion in disposing of a Rule 12(f) motion to strike redundant, impertinent, immaterial, or scandalous matter.").

[14] *Id.*, § 1380.

[complaint] (and its voluminous exhibits) to determine which allegations are relevant to the claims.[15]

While motions to strike are generally disfavored, if they serve to remove unnecessary clutter from a case, they actually expedite the litigation rather than delay it.[16] "[S]ince pleading evidence is not favored under the ... rules because it violates the principle of simplicity of statement, evidentiary allegations may be stricken, particularly if the excessive narrative is lengthy, or if the details are inadmissible or prejudicial."[17]

Exhibits that are redundant, immaterial, and only serve to inflame the passions may be stricken because they are immaterial at the pleading stage.[18] A court even has "discretion to *dismiss* a claim due to a party's excessive attachment of unnecessary exhibits."[19]

D. HRS Chapter 632 – Declaratory Judgments.

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[15] See *Beavers-Gabriel v. Medtronic, Inc.*, No. CIV. 13-00686 JMS, 2014 WL 4723802, at *2 (D. Haw. Sept. 22, 2014).

[16] *Miller v. City of Harvey*, No. 13 C 9257, 2014 WL 3509760, at *5 (N.D. Ill. July 15, 2014), citing *Heller Fin., Inc. v. Midwhey Powder Co.*, 883 F.2d 1286, 1294 (7th Cir. 1989).

[17] *Id.*, 2014 WL 3509760, at *5.

[18] *Id.*

[19] *WebQuest.com, Inc. v. Hayward Industries, Inc.*, 2010 WL 4630230, *2 (E.D. Cal. 2010) (italics added), citing *Hatch v. Reliance Ins. Co.*, 758 F.2d 409, 415 (9th Cir.1985) (noting that district court did not abuse discretion in dismissing complaint that included over 70 pages of exhibits).

The declaratory judgment statute grants a court the power, "[i]n cases of actual controversy," to make "binding adjudications of right" only if the court is "satisfied also that a declaratory judgment will serve to terminate the uncertainty or controversy giving rise to the proceeding." HRS § 632-1.

E. HRCP Rule 65 – Injunctions.

The form and scope of injunctions is set out in HRCP Rule 65(d), which provides:

> [e]very order granting an injunction ... shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail ... the act or acts sought to be restrained .... (HRCP 65(d)).

ARGUMENT

I. The City Defendants Are Entitled to a More Definite Statement of the Complaint Because It Is Vague, Ambiguous, Prolix, Confusing, and Fails to Clearly Identify Any Claims Against the City Defendants.

Plaintiffs' Complaint, despite its length and incendiary language, fails to clearly identify any claims against the City Defendants (or any other Defendant), rendering it impossible to prepare a response. While pleading standards are generally liberal, there can be enormous burdens and unfairness when a complaint grossly violates basic principles of pleading.

Praising a succinct federal form pleading for negligence, the Ninth Circuit (whose interpretations are considered "highly persuasive"[20]), noted that it "fully

[20] *Gap*, 106 Hawai'i at 341.

sets forth who is being sued, for what relief, and on what theory, with enough detail to guide discovery. It can be read in seconds and answered in minutes."[21] The court contrasted that with the complaint it was reviewing, stating that it was "argumentative, prolix, replete with redundancy, and largely irrelevant."[22]

The Ninth Circuit noted that "[p]rolix, confusing complaints ... impose unfair burdens on litigants and judges,"[23] and elaborated on these burdens:

> As a practical matter, the judge and opposing counsel, in order to perform their responsibilities, cannot use a complaint such as the one plaintiffs filed, and must prepare outlines to determine who is being sued for what. Defendants are then put at risk that their outline differs from the judge's, that plaintiffs will surprise them with something new at trial which they reasonably did not understand to be in the case at all, and that res judicata effects of settlement or judgment will be different from what they reasonably expected. "[T]he rights of the defendants to be free from costly and harassing litigation must be considered."[24]

Such is the case here. The City Defendants intend to file a motion to dismiss the Complaint but cannot discern the universe of the claims against them. Without a more definite statement, there is a considerable risk that Plaintiffs will oppose the motion to dismiss by arguing that certain vague allegations constitute claims that are not clearly identified as claims in the motion to dismiss. The City Defendants and the Court should not have to perform such detective work. Some of the particular deficiencies are discussed in detail below.

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[21] *McHenry*, 84 F.3d at 1177.

[22] *Id.*

[23] *Id.*

[24] *Id.* at 1179–80 (citation omitted).

A. Declaratory Relief

The Complaint is captioned one for "Damages, Declaratory and Injunctive Relief."

The declaratory judgment statute grants a court the power to make "binding adjudications of right" only if there is an "actual controversy" and the court is "satisfied also that a declaratory judgment will serve to terminate the uncertainty or controversy giving rise to the proceeding." HRS § 632-1.

Plaintiffs make no allegations in support of their claim for declaratory relief, even though the "rules of good pleading are as important in a suit for a declaratory judgment as in any other civil action."[25]

Apart from the caption, the only mention of declaratory relief is in paragraph D of the prayer for relief, which contains this vague, overbroad, and totally inappropriate prayer for declaratory relief:

> D. For Declaratory relief, determining that the process and procedures of the Ethics Commission in instigating investigations and prosecuting violations of the Standards of Conduct are in violation of the law, and to determine the proper procedures as described in the applicable statutes and rules[.] (Complaint, p. 43.)

The "violation" mentioned in paragraph D of the prayer does not allege that an "actual controversy" exists and only references "the process and procedures of the Ethics Commission," which is so vague and overbroad that neither the Defendants nor the Court can possibly know as to which "process and procedures" Plaintiffs are seeking a declaration. Furthermore, "Standards of Conduct" is a vague phrase used 15 times in the Complaint, without citing the specific standard at issue.

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[25] C. Wright, A. Miller & M. Kane, 10B FEDERAL PRACTICE AND PROCEDURE § 2768 (3d ed.).

"Before a court may grant declaratory relief based on a … violation, the violation must be set forth with specificity; broad, vague and ill-defined allegations … are insufficient."[26]

Finally, asking this Court to issue a declaratory judgment "to determine the proper procedures as described in the applicable statutes and rules" far exceeds the Court's statutory authority to make "binding adjudications of right." In effect, the Plaintiffs are inviting the Court to override the authority of the Ethics Commission to determine its own procedures, and to become embroiled in an ongoing supervisory role of this City department.

B. Injunctive Relief

There are also no allegations in the Complaint as to injunctive relief, which is again only addressed in the title of the Complaint and the prayer for relief:

E. For injunctive relief, requiring the Ethics Commission and

[26] *Heimbaugh v. City & County of San Francisco*, 923 F.2d 862, at *4 (9th Cir. 1991).

> defendants to comply with the law and the required procedures for instituting investigations and prosecuting violations of the Standards of Conduct[.] (Complaint, p. 43.)

This language is no less vague than the prayer for declaratory relief, and thus the allegation fails to satisfy the standards of specificity imposed by the law of injunctions,[27] expressly requiring that

> [e]very order granting an injunction ... shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail ... the act or acts sought to be restrained .... (HRCP 65(d)).

C. Defamation

The Complaint repeats the word "defamatory" six times.[28] Is this a claim for defamation? One can only guess, as there is no count entitled "defamation" or "libel" or "slander." Plaintiffs' allegations fail to satisfy even the generous notice pleading requirements under Rule 8(a). They have failed to identify the alleged defamatory statements and the time and circumstances when those statements were made. Plaintiffs should be ordered to provide this information in the Complaint, as other courts have ordered with similarly deficient pleadings of defamation.[29]

"A complaint is insufficient when it does not allege either the specific words or the substance of statements alleged to be defamatory."[30] The reason is that "[t]he defining feature of a defamation claim is a statement of fact that is provably false," and because "rhetorical hyperbole, vigorous epithet[s], lusty and imaginative expression[s] of...contempt, and language used in a loose, figurative sense have all been accorded constitutional protection."[31] A California court has noted:

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[27] See *Cognitest Corp. v. Riverside Pub. Co.*, No. 94 C 4741, 1994 WL 727980, at *4 (N.D. Ill. Dec. 30, 1994), aff'd, 107 F.3d 493 (7th Cir. 1997).

[28] Complaint, ¶¶ 80, 84(a), 99(a), 99(c), 128 (2).

[29] See, e.g., *Hall v. Whitacre*, No. 06-1240, 2007 WL 1585960 at *3 (D. Kan. May 31, 2007) (granting a motion for a more definite statement to identify the substance

> It is sometimes said to be a requirement, and it certainly is the common practice, to plead the exact words or the picture or other defamatory matter. The chief reason appears to be that the court must determine, as a question of law, whether the defamatory matter is on its face or capable of the defamatory meaning attributed to it by the innuendo. Hence, the complaint should set the matter out verbatim, either in the body or as an attached exhibit.[32]

In short, if Plaintiffs are indeed asserting a claim for defamation, they should be ordered to provide a more definite statement of the claim consistent with the above authorities.

D. Violations of "Standards of Conduct"

The Complaint alleges knowing violations of the "Standards of Conduct." (¶

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of the alleged slanders and when the statements occurred); *PAI Corp. v. Integrated Sci. Solutions, Inc.*, No. C-06-5349, 2007 WL 1229329 at *9 (N.D. Cal. Apr. 25, 2007) (ordering a more definite statement when defendants have failed to identify "when they were made and to whom they were made.").

[30] *Morse v. County of Merced*, No. 116CV00142DADSKO, 2016 WL 3254034, at *9 (E.D. Cal. June 13, 2016) (internal quotation marks and citation omitted).

[31] *Id.* (internal quotation marks and citations omitted).

[32] *Id.* (citation omitted).

50). It is unclear whether this is a claim and the "standards of conduct" to which they refer. If so, Plaintiffs should provide a more definite statement of it.

Plaintiffs also allege in paragraph 108 that Plaintiff Katherine Kealoha and others have filed eight complaints with the Ethics Commission regarding some or all of the alleged violations contained in other paragraphs of the Complaint. Plaintiffs should be ordered to clarify whether they are asking the Court to assert concurrent jurisdiction over those complaints before the Ethics Commission and whether those complaints are currently before or have been decided by the Ethics Commission, or whether the Complaint is making a different claim regarding the "standards of conduct."

II. The Court Should Strike the Redundant, Immaterial, Impertinent, and Scandalous Matters From the Complaint and the Nearly Thousand Pages of Exhibits.

A court has considerable discretion to strike "redundant, immaterial, impertinent, or scandalous matter."[33]

A. Certain allegations in the Complaint should be stricken.

According to its rules of procedure,[34] the records of the Ethics Commission are kept confidential (with certain limited exceptions).[35] By filing this Complaint and placing Ethics Commission matters relating to third parties in the public record, they violate the confidentiality of those persons who are not parties to this lawsuit.

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[33] HRCP Rule 12(e); Wright, Miller, Kane & Spencer, *supra*, § 1382.

[34] The City Defendants request that the Court take judicial notice of the Ethics Commission's Rules of Procedure. "Courts may take judicial notice of the rules and regulations of an administrative agency…." 60 AM. JUR. PROOF OF FACTS 3d 175 (2001). The Court may take judicial notice of facts that are both "generally known" within this Court's jurisdiction and "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be

Allegations regarding third parties[36] are immaterial, impertinent, and scandalous because they are not named defendants. They should therefore be stricken so they do not create "unnecessary notoriety" by becoming public documents and hence "generally available."[37] Courts may strike pleadings "to purge the court's files and protect the person who is the subject of the allegations."[38] Courts have eliminated allegations that adversely reflect on persons who are not parties.[39] Moreover, these allegations are not germane to any claim,

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questioned." HRE Rule 201(b).

[35] Ethics Commission Rules of Procedure, Rule 1.11(a), available at: http://www.honolulu.gov/rep/site/ethics/rules/Rules_of_Procedure.pdf; see also Frequently Asked Questions available at http://www.honolulu.gov/ethics/faqs.html.

[36] Paragraphs 20–27, 28–36, and 55–63 of the Complaint contain allegations against third parties. Moreover, Exhibit 13, for example, contains the personal LinkedIn Profile of a nonparty. [LinkedIn is a social networking service. See https://en.wikipedia.org/wiki/LinkedIn].

[37] Wright, Miller, Kane & Spencer, *supra*, § 1382.

[38] *Id.*

[39] *Id.*, § 1383.

another reason to strike them.[40]

The Complaint violates the mandate of HRCP Rule 8(e) that allegations be "simple, concise, and direct." Instead, it recites evidentiary material at great length. "[S]ince pleading evidence is not favored under the … rules because it violates the principle of simplicity of statement, evidentiary allegations may be stricken, particularly if the excessive narrative is lengthy, or if the details are inadmissible or prejudicial."[41]

B. The exhibits should be stricken.

The Complaint does not clearly identify any claims against the City Defendants or any other Defendant showing that any Plaintiff is entitled to relief. On the other hand, nearly a thousand pages of exhibits (including more than 50 newspaper articles) are attached, with exhibit numbers inserted at the end of allegations without any specification as to what portions of the exhibits are being referenced and for what purpose. By incorporating this undifferentiated mass of materials, Plaintiffs may assume they have stated claims, but the rules and case law are contrary.

HRCP "Rule 10(c) authorizes the incorporation of 'any written instrument which is an exhibit' attached to a pleading and makes the material thus

[40] See *id.*

[41] *Miller*, 2014 WL 3509760, at *5.

incorporated an integral part of that pleading for all purposes.[42] For example, in a complaint alleging breach of contract, it would be appropriate to attach the contract as an exhibit.[43] On the other hand, "exhibits containing largely evidentiary material typically do not qualify as 'written instruments' under Rule 10(c)."[44] Otherwise stated, "lengthy or numerous exhibits containing extraneous or evidentiary material should not be attached to the pleadings."[45] Motions to strike that remove unnecessary clutter serve to expedite the litigation, not delay it.[46]

Exhibits are no substitute for a properly pled complaint. If a party "were allowed to make allegations essential to its claims in documents merely attached to its complaint," then the opposing party "might have difficulty understanding the nature of the … claim."[47] A court may consider the fact that it would require significant judicial resources to sift through voluminous exhibits.[48] A plaintiff "may not rely on the Court to wade through the exhibits and piece together his claims. It is Plaintiff's duty to clearly support his claims with sufficient allegations."[49]

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[42] Wright, Miller, Kane & Spencer, *supra*, § 1327.

[43] See *Signature Flight Support Corp. v. Am. Trans Air, Inc.*, No. 8:07 CV 2219 T24 TGW, 2010 WL 883643, at *2 (M.D. Fla. Mar. 5, 2010).

[44] *Thaut v. Hsieh*, No. 215CV0590JAMKJNPS, 2016 WL 3058235, at *10 (E.D. Cal. May 31, 2016), citing *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003).

[45] *Montgomery v. Buege*, No. CIV. 08-385 WBS KJM, 2009 WL 1034518, at *3 (E.D. Cal. Apr. 16, 2009), quoting Wright, Miller, Kane & Spencer, *supra*, § 1327.

[46] *Miller v. City of Harvey*, No. 13 C 9257, 2014 WL 3509760, at *5 (N.D. Ill. July 15, 2014) (internal quotation marks omitted), citing *Heller Fin., Inc. v. Midwhey Powder Co.*, 883 F.2d 1286, 1294 (7th Cir. 1989).

[47] Wright, Miller, Kane & Spencer, *supra*, § 1327 n.23, quoting *United States v. Citigroup Smith Barney Account No. 600-00338 Held in the Name of Alexander*, No. 06-CV-3730(NGG), 2008 WL 2474642, at *1 (E.D.N.Y. June 19, 2008).

Courts grant motions to strike exhibits when they do not qualify as "written instruments" under Rule 10(c)."[50] A court may strike exhibits "in the nature of evidence submitted to bolster allegations contained in the complaint."[51]

Plaintiffs have appended more than 50 newspaper articles as exhibits.[52] These are not, however, "the type of documentary evidence or 'written instruments' which Rule 10(c) intended to be incorporated into ... the complaint").[53]

Exhibits that only serve to inflame the passions may also be stricken because they are immaterial at the pleading stage.[54] A court even has "discretion to *dismiss* a claim due to a party's excessive attachment of unnecessary exhibits."[55]

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[48] See *Beavers-Gabriel, Inc.*, 2014 WL 4723802, at *2 (D. Haw. Sept. 22, 2014).

[49] *Hernandez v. Smith*, No. 109CV00828OWWGSAPC, 2009 WL 4546722, at *2 (E.D. Cal. Dec. 2, 2009).

[50] *Thaut*, 2016 WL 3058235, at *10 (citations omitted).

[51] *Id.*, quoting *Montgomery v. Buege*, 2009 WL 1034518, at *3 (E.D. Cal. Apr. 16, 2009).

[52] Complaint, Exhibits 4, 12, 18, 19 (multiple), 20, 22 (multiple), 26 (multiple), 34 (multiple), 35, 36 (multiple), 38, 53 (multiple), 54 (multiple), 55 (multiple), 56, 66.

[53] *Thaut*, 2016 WL 3058235, at *10 quoting *Perkins v. Silverstein*, 939 F.2d 463, 467 n.2 (7th Cir. 1991).

[54] *Id.*

Finally, Plaintiffs' attempt to magnify the weight of their exhibits with a "Verification" based on "information and belief" is unavailing. The effect of a verification is to accord it the weight of an affidavit, but statements in an affidavit have no value unless they are based on personal knowledge or some other admissible ground."[56] Such is not the case with Plaintiffs' Verification and exhibits.

CONCLUSION

The Court should grant the City Defendants' motion for a more definite statement and direct Plaintiffs to file a First Amended Complaint that clearly identifies the specific claims against each named Defendant, including allegations regarding the elements of those claims, and such further information as required by the Court.

The Court should also grant the City Defendants' motion to strike allegations from the Complaint, as well as the exhibits.

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[55] *WebQuest.com, Inc. v. Hayward Industries, Inc.*, 2010 WL 4630230, *2 (E.D. Cal. 2010) (italics added), citing *Hatch v. Reliance Ins. Co.,* 758 F.2d 409, 415 (9th Cir.1985) (noting that district court did not abuse discretion in dismissing complaint that included over 70 pages of exhibits). Here more than ten times that number are attached to the Complaint.

[56] *Parker v. Learn Skills Corp.*, 530 F. Supp. 2d 661, 670 (D. Del. 2008).

DATED: Honolulu, Hawai'i, July 11, 2016.

DONNA Y. L. LEONG
Corporation Counsel

By ______________________
PAUL S. AOKI
ROBERT M. KOHN
Deputies Corporation Counsel

Attorneys for Defendants
HONOLULU ETHICS
COMMISSION and CITY AND
COUNTY OF HONOLULU

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

LOUIS M. KEALOHA, KATHERINE E. KEALOHA, and KRISTINA KEALOHA, a minor child, by her next friend, KATHERINE E. KEALOHA, Plaintiffs, vs. CHARLES W. TOTTO, individually and as Executive Director and Legal Counsel of the Honolulu Ethics Commission; LETHA A.S. DECAIRES, individually and as investigator for the Honolulu Ethics Commission; HONOLULU ETHICS COMMISSION; and THE CITY AND COUNTY OF HONOLULU, Defendants.	CIVIL NO. 16-1-1166-6 GWBC (Non-Motor Vehicle Tort) NOTICE OF HEARING

NOTICE OF HEARING

TO: KEVIN P.H. SUMIDA, ESQ.
ANTHONY K. WONG, ESQ.
LANCE S. AU, ESQ.
STEPHEN K. ROY, ESQ.
Sumida Au & Wong
735 Bishop Street, Suite 411
Honolulu, Hawai'i 96813

Attorneys for Plaintiffs

Notice is hereby given that the foregoing Motion shall come on for Hearing before the Honorable Gary W.B. Chang, Judge of the above-entitled Court, in his courtroom at Circuit Court of the First Circuit, Ka'ahumanu Hale, 777 Punchbowl Street, Honolulu, Hawai'i 96813, on August 3, 2016 at 3:00 p.m. or soon thereafter as counsel may be heard.

DATED: Honolulu, Hawai'i, July 11, 2016.

DONNA Y. L. LEONG
Corporation Counsel

By ______________________
PAUL S. AOKI
ROBERT M. KOHN
Deputies Corporation Counsel

Attorneys for Defendants
HONOLULU ETHICS
COMMISSION and CITY AND
COUNTY OF HONOLULU

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAIʻI

LOUIS M. KEALOHA, KATHERINE E. KEALOHA, and KRISTINA KEALOHA, a minor child, by her next friend, KATHERINE E. KEALOHA, Plaintiffs, vs. CHARLES W. TOTTO, individually and as Executive Director and Legal Counsel of the Honolulu Ethics Commission; LETHA A.S. DECAIRES, individually and as investigator for the Honolulu Ethics Commission; HONOLULU ETHICS COMMISSION; and THE CITY AND COUNTY OF HONOLULU, Defendants.	CIVIL NO. 16-1-1166-6 GWBC (Non-Motor Vehicle Tort) CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that, on July 11, 2016 and by the methods of service noted below, a true and correct copy of the foregoing was served on the following at their last known address as shown below:

KEVIN P.H. SUMIDA, ESQ.
ANTHONY K. WONG, ESQ.
LANCE S. AU, ESQ.
STEPHEN K. ROY, ESQ.
735 Bishop Street, Suite 411
Honolulu, Hawaiʻi 96813
Attorneys for Plaintiffs

Via U.S. Mail, Postage Prepaid

CHARLES W. TOTTO *Via U.S. Mail, Postage Prepaid*
3846 Mariposa Drive
Honolulu, Hawai'i 96816
Defendant

LETHA A.S. DECAIRES *Via U.S. Mail, Postage Prepaid*
1022 Loho Street
Kailua, Hawai'i 96734
Defendant

DATED: Honolulu, Hawai'i, July 11, 2016.

DONNA Y. L. LEONG
Corporation Counsel

By ______________________
PAUL S. AOKI
ROBERT M. KOHN
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Attorneys for Defendants
HONOLULU ETHICS
COMMISSION and CITY AND
COUNTY OF HONOLULU

1480075-5

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

LOUIS M. KEALOHA, KATHERINE E. KEALOHA, and KRISTINA KEALOHA, a minor child, by her next friend, KATHERINE E. KEALOHA, Plaintiffs, vs. CHARLES W. TOTTO, individually and as Executive Director and Legal Counsel of the Honolulu Ethics Commission; LETHA A.S. DECAIRES, individually and as investigator for the Honolulu Ethics Commission; HONOLULU ETHICS COMMISSION; and THE CITY AND COUNTY OF HONOLULU, Defendants.	CIVIL NO. 16-1-1166-6 GWBC (Non-Motor Vehicle Tort) NOTICE OF HEARING

NOTICE OF HEARING

TO: Kevin P.H. Sumida, Esq.
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Attorneys for Defendants
HONOLULU ETHICS COMMISSION and CITY AND COUNTY OF HONOLULU

CHARLES W. TOTTO
3846 Mariposa Drive
Honolulu, Hawaii 96816

Defendant

NOTICE IS HEREBY GIVEN that Defendant LETHA A.S. DECAIRES, individually and as investigator for the Honolulu Ethics MOTION FOR MORE DEFINITE STATEMENT AND MOTION TO STRIKE shall come on for hearing before the Honorable Gary W.B. Chang in the Circuit Court of the First Circuit Court at Ka'ahumanu Hale, 777 Punchbowl Street, Honolulu, Hawai'i 96813 on November 9, 2016 at 3:00 ~~a.m.~~/p.m. or as soon thereafter as counsel may be heard.

DATED: Honolulu, Hawaii, September 20, 2016.

DAVID M. LOUIE
NICHOLAS R. MONLUX

Attorneys for Defendant
LETHA A.S. DECAIRES,
individually and as investigator
for the Honolulu Ethics Commission

1480075-5

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

LOUIS M. KEALOHA, KATHERINE E. KEALOHA, and KRISTINA KEALOHA, a minor child, by her next friend, KATHERINE E. KEALOHA, Plaintiffs, vs. CHARLES W. TOTTO, individually and as Executive Director and Legal Counsel of the Honolulu Ethics Commission; LETHA A.S. DECAIRES, individually and as investigator for the Honolulu Ethics Commission; HONOLULU ETHICS COMMISSION; and THE CITY AND COUNTY OF HONOLULU, Defendants.	CIVIL NO. 16-1-1166-6 GWBC (Non-Motor Vehicle Tort) **CERTIFICATE OF SERVICE**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date a true and correct copy of the foregoing document was duly served upon the following parties at their last known addresses, via hand-delivery or via United States mail, postage prepaid:

	HAND DELIVERY	U.S. MAIL
Kevin P.H. Sumida, Esq. Anthony L. Wong, Esq. Lance S. Au, Esq. Stephen K. Roy, Esq. SUMIDA AU & WONG 735 Bishop Street, Suite 411 Honolulu, Hawaii 96813 Attorneys for Plaintiffs	X	

	HAND DELIVERY	U.S. MAIL
Donna Y. L. Leong, Esq. Corporation Counsel Paul S. Aoki, Esq. Robert M. Kohn, Esq. Deputies Corporation Counsel CITY AND COUNTY OF HONOLULU 530 South King Street, Room 110 Honolulu, Hawaii 96813 Attorneys for Defendants HONOLULU ETHICS COMMISSION and CITY AND COUNTY OF HONOLULU	X	
CHARLES W. TOTTO 3846 Mariposa Drive Honolulu, Hawaii 96816 Defendant		X

DATED: Honolulu, Hawaii, September 20, 2016.

DAVID M. LOUIE
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Attorneys for Defendant
LETHA A.S. DECAIRES,
individually and as investigator
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